

Q. It's your testimony that the meaning of 2.01 set forth in the last sentence of paragraph 14 of your April 2004 declaration is not apparent from the express language of 2.01 --

MR. MARRIOTT: Objection as to form. Mischaracterizes --

Q. -- as reflected in tab five; is that correct?

MR. MARRIOTT: Let me just -- let me just get my objection in.

Objection as to form. It misstates the testimony, calls for speculation and lacks foundation.

You may answer.

THE WITNESS: I'm sorry. You'll have to read the question back again.

(DISCUSSION OFF THE RECORD)

(PREVIOUS QUESTION THEN READ)

MR. MARRIOTT: My objections are there.

THE WITNESS: Okay. It was -- it was apparent to -- I say, us, or me, AT&T, when we put the language together, that it did not mean -- it meant exactly what was in the last line of paragraph 16 on page seven.

MR. MARRIOTT: 14?

BY MR. GANT:

Q. You've testified --

MR. MARRIOTT: 14? Are we just clear? It's -- he's referring to 14.

THE WITNESS: Seven and 16. Yeah.

BY MR. GANT:

Q. All right. You testified that there was some clarification needed?

A. Yes.

Q. Why was that?

A. It was at the request of our licensees as to what our intent was with that particular language.

Q. There was uncertainty about the meaning of 2.01?

A. Yes.

Q. And at least in the minds of the licensees, they couldn't tell exactly what it meant by looking at the language of 2.01; correct?

MR. MARRIOTT: Objection as to form.

THE WITNESS: I'm not sure about what -- again, what they thought, but the reason -- the stated reasons that they came in, the software agreements preceded any commercial offerings that they were trying to put together.

And so once that started to happen, and they started developing things of value, they wanted clarification that we did not exercise ownership in that which they were creating. And we clarified we did not, only to the extent it included any part of the software products that we gave them.

But there was a lot of conversation about that, and it -- the conversation evolved from the time the source -- source code agreement was executed in some cases until such time as they were getting ready to actually go to market or produce something that they wanted distributed. Normally the questions did not come up when someone was using it for internal purposes.

BY MR. GANT:

Q. Going back to my question a few moments ago. Can you point me to the express language in section 2.01 of the document at tab five that supports your statement about the meaning of 2.01 that appears in the last sentence of paragraph 14 of your April 2004 declaration?

MR. MARRIOTT: And to that question I object on the grounds that I think it's harassing, because he's answered the question three times.

You may not like the answer, but he's answered it. And it's been asked and answered, in light of my additional objection, and also it calls for speculation and lacks foundation.

If you have a different answer, Mr. Olson -- Mr. Olson. Mr. Wilson, please, offer it.

THE WITNESS: It's as I've previously stated.

BY MR. GANT:

Q. You can't answer my question?

A. I already answered your question.

Q. Do you think that you've pointed me to express language in section 2.01 that supports the statement -- statement in paragraph 14? Yes or no?

MR. MARRIOTT: Same objections as before.

THE WITNESS: It's kind of hard for me to separate the two, because I know what was intended by the overall agreement, and I know what we meant by the language. And so when I look at 2.01, it's -- it's stating what I said in 16 of the declaration.

MR. MARRIOTT: Just to clarify, is it -- is it 16 or 14?

MR. GANT: It's 14. It's 14.

1 MR. MARRIOTT: Because I think it's 14,
2 and I wanted to just make sure we're --
3 THE WITNESS: It's 14.
4 MR. MARRIOTT: Paragraph 14. I think
5 that's what you're referring to.
6 THE WITNESS: Yeah. It's the bottom of
7 paragraph 14, which goes into page seven. Right?
8 MR. GANT: That's right.
9 THE WITNESS: Uh-huh.
10 So when I look at 2.01, that's what it's
11 saying to me. And I -- I further clarified that
12 with our licensees.
13 BY MR. GANT:
14 Q. You can't point me to the words? For
15 instance --
16 A. No. I can't point you to those exact
17 words. That's correct.
18 Q. So the phrase, for instance, material
19 proprietary UNIX System V source code does not
20 appear in section 2.01, does it?
21 MR. MARRIOTT: Objection as to form.
22 THE WITNESS: No. We don't see that.
23 BY MR. GANT:
24 Q. In fact, the term source code doesn't
25 appear there, does it?

1 MR. MARRIOTT: Same objection.
2 THE WITNESS: I think it appears, because
3 of -- again, when I look at these agreements, I
4 have to look at them in their whole, and software
5 product is source code or other materials. In
6 other words, it could mean different things for
7 different products.
8 When I see software product, I go back to
9 the schedule of software or software products
10 defined under the software agreement. And so
11 software products, meaning source code, object code
12 any documentation that was associated with that
13 particular product.
14 BY MR. GANT:
15 Q. It was your understanding when you were at
16 AT&T that the UNIX license agreements needed to be
17 looked at as a whole to understand their meaning?
18 A. Yes.
19 Q. Could you take a look at paragraph 15 of
20 your April 2004 declaration? Do you have that in
21 front of you?
22 A. Yes, I do.
23 Q. Do you see in the first line you used the
24 term, "control"?
25 A. (WITNESS NODS HEAD UP AND DOWN)

1 Q. Can you direct me -- let's use, again, the
2 document at tab five as an example. Can you point
3 me to anyplace in the software agreement between
4 AT&T and Sequent where the term control is used?
5 MR. MARRIOTT: Do you want him to read the
6 entire Sequent agreement or --
7 MR. GANT: He's reviewed it several times.
8 I presume he has some familiarity. He can tell me
9 if he needs to review it.
10 MR. MARRIOTT: Take whatever time you need
11 to read the document, if you're going to be asked
12 about a document and the contents -- its entire
13 contents.
14 MR. GANT: You're welcome to help him, if
15 you think you know.
16 MR. MARRIOTT: I'm not here to help. I'm
17 just here to protect the witness.
18 MR. GANT: Well, I invite you to show him
19 anyplace where the word appears, for the sake of
20 efficiency. The witness can take whatever time he
21 needs.
22 THE WITNESS: What I was doing was
23 referring back to 7.06(b), where we provided for
24 the -- again, the exact specific words, but, in
25 other words, we -- we required our licensees to

1 adhere to the -- the entire agreement.
2 And we realized that in the use of the
3 software products there may be occasions where they
4 exchange software products with other licensees.
5 And our requirement with that -- that status of
6 that license with the person they wish to exchange
7 or talk to about the code had to be of equal scope,
8 and that's -- that's in paragraph 7.06(b).
9 BY MR. GANT:
10 Q. Is it your testimony that when you use the
11 term, "control," in paragraph 15, that you were --
12 you had in mind section 7.06(b) of the standard
13 software agreement?
14 MR. MARRIOTT: Objection as to form.
15 THE WITNESS: Yeah. That's why it's
16 there. I mean, in other words, the -- we wanted to
17 clarify to our licensees that the -- that they --
18 in other words, where there was a UNIX system users
19 group and there was education licenses. There were
20 commercial licenses and administrative licenses.
21 And part of this growth was that these
22 licensees could talk to each other. And to the
23 degree that it included specific reference to our
24 software products, we required them to verify it,
25 which was the control we -- we extended with regard

1 to protection of the software products. I mean
2 that was --
3 BY MR. GANT:
4 Q. You acknowledge that you're using a term,
5 "control," in your declaration. Notwithstanding
6 that the term doesn't appear anywhere in the
7 standard software agreement; correct?
8 MR. MARRIOTT: Objection as to form.
9 THE WITNESS: That's correct, and I'm
10 trying to explain why it used that word, but, yes,
11 I agree with that.
12 BY MR. GANT:
13 Q. Later in that same paragraph, the last
14 sentence says, "Although, the UNIX System V source
15 code contained in a modification or derivative work
16 continued to be owned by AT&T or USL, the code
17 developed by or for the licensee remained the
18 property of the licensee, and could, therefore, be
19 used, exported, disclosed or transferred freely by
20 the licensee."
21 What did you mean by the phrase, "remains
22 the property of the licensee"?
23 A. The -- anything that was distributed under
24 the scheduled software product source code, object
25 code, materials, documentation remained the

1 property of -- of AT&T. And the code that they
2 developed, independent of that, belonged to the
3 licensee.
4 So we -- the definition was the software
5 product and all of it associated with that
6 particular product was AT&T's. Anything that they
7 developed belonged to the licensee.
8 MR. GANT: Could you read it back, please.
9 (PREVIOUS ANSWER THEN READ)
10 BY MR. GANT:
11 Q. In your previous answer what did you mean
12 by developed independent -- or independently?
13 A. I probably misspoke. Not independently.
14 In other words, if it didn't contain any of our
15 code, it was their -- their work, and not ours. We
16 didn't exercise any assertion of rights to the code
17 that was not contained in the software product.
18 Q. What do you mean, "contained in the
19 software product"?
20 A. In that each software product had a
21 schedule defining it, a distribution that came with
22 that particular software product, and it included
23 source code, object code, documentation.
24 Q. Well, how does one tell --
25 MR. MARRIOTT: Are you done? I'm sorry.

1 Are you done?
2 THE WITNESS: (NODS HEAD UP AND DOWN)
3 MR. MARRIOTT: I couldn't tell if you were
4 done. I apologize. Go ahead.
5 BY MR. GANT:
6 Q. How does one tell whether or not AT&T code
7 was contained in a product of a licensee?
8 MR. MARRIOTT: Objection as to form.
9 THE WITNESS: There's actually several
10 ways. I mean you could -- you look at the
11 functionality exhibited by a product and whether it
12 is similar to the one that you have in your
13 software product.
14 And it can go from there, all of the way
15 to the extent where you actually go in and do an
16 audit of the code itself. And on occasion we did
17 that, where we actually had a third party, not a
18 member of AT&T or the licensee --
19 They had an independent, third party
20 computer software expert to go in and look at their
21 code to make sure that it was -- did not contain
22 the software product or if it did contain the
23 software product.
24 BY MR. GANT:
25 Q. Who is that third party?

1 A. Usually it was someone associated with the
2 academic community that was not commercially
3 involved with any type of a development.
4 Q. And why were experts hired to assess
5 whether or not improper code was contained in a
6 licensee's product?
7 MR. MARRIOTT: Objection as to form.
8 Misstates the testimony, lacks foundation.
9 THE WITNESS: It was part and parcel -- or
10 part and parcel was protecting the software
11 products under the trade secret agreement. And in
12 some cases we had to actually go in and verify.
13 Some cases we just asked.
14 But we had to have due diligence in making
15 sure that the code deemed for this software product
16 was, in fact, that, or if it was something else, it
17 was, in fact, that.
18 Q. Did you find instances where there were
19 problems with what a licensee had done?
20 MR. MARRIOTT: Objection as to form.
21 Vague.
22 THE WITNESS: Yes, we did, because -- and
23 I don't -- I can't recall a specific instance
24 without going back and digging through some stuff,
25 but I know there were cases where we actually used

independent third parties to look at code.

There were cases when we -- we -- I, in person, made calls to licensees based on the functionality being exhibited in their product, to see if they were properly licensed.

Because in some cases, you could look at the product, and say, okay. This -- this seems to be based on one of our software products, without actually looking at all of the source code. And in many cases that was enough to cause a declaration. Oh, yes. And the licensee would --

Q. Was there a particular provision of the licensing agreement that set out how this audit would be conducted or that it would be conducted?

MR. MARRIOTT: Can I just hear the question back.

(PREVIOUS QUESTION THEN READ)

MR. GANT: I think it was process, not product, but --

THE WITNESS: The exact process that we would use for any given situation was usually negotiated with the licensee to make sure we were respective of their concerns, as well as ours. And so we tried to do it in a way that was not objectional to the licensee, if they didn't have

anything to hide.

BY MR. GANT:

Q. Was that part of a standard software agreement between AT&T and licensees?

A. It talks about the breach, and how -- giving the licensee a period of time to rectify anything that we consider a breach of agreement, and so that is defined in the software agreement.

Q. Was it important to AT&T that it have the right to conduct these audits?

MR. MARRIOTT: Objection as to form.

THE WITNESS: Yes, it was.

BY MR. GANT:

Q. Why is that?

A. Well, in order to assure the compliance with the agreement itself.

Q. Including ensuring that the code hadn't inappropriately been used by licensees?

MR. MARRIOTT: Same objection.

THE WITNESS: I was just reading back. I think it's paragraph six, but -- yes.

MR. MARRIOTT: When you get a moment, maybe --

MR. GANT: That's okay. Why don't we --

MR. MARRIOTT: We've been going for

awhile.

MR. GANT: Yeah. Why don't we take a break, and I'll try and streamline during the break.

MR. MARRIOTT: Okay.

THE VIDEOGRAPHER: One moment, please.

MR. MARRIOTT: I'm told -- I just asked Jason to check. I'm told that you've used two and a half hours. So -- just for your information.

MR. GANT: Okay.

THE VIDEOGRAPHER: One moment, please. Going off the record. The time is

3:59 p.m.

(RECESS TAKEN AT 3:59 P.M. TO 4:16 P.M.)

THE VIDEOGRAPHER: Back on the record.

The time is 4:16 p.m.

Please, continue.

BY MR. GANT:

Q. All right. Mr. Wilson, could you direct your attention to paragraph 16 on page seven of your April 2004 declaration.

(MR. DAVIS THEN EXITED THE ROOM)

THE WITNESS: Yes.

BY MR. GANT:

Q. Do you see where you say, "I do not

believe that our licensees would have been willing," and the sentence continues on?

A. Yes.

MR. MARRIOTT: I apologize. Where are we?

MR. GANT: Paragraph 16, page seven, the first sentence.

BY MR. GANT:

Q. Am I correct that you qualified it in that way, because you don't know for a fact whether or not licensees would have reacted in a way you've described?

MR. MARRIOTT: Objection as to form. Vague, ambiguous.

Q. Let me ask it this way: Do you have personal knowledge about how licensees -- strike that.

Do you have personal knowledge about whether licensees would have been willing to enter into a software agreement if they understood section 2.01 to grant AT&T or USL the right to own or control source code developed by the licensee? Do you have personal knowledge about that?

A. Yes, I do.

Q. You can speak on behalf of the licensees?

A. I can speak on behalf of -- on behalf --

1 no. I cannot speak on behalf of the licensees, but
2 I can speak to what they related to me with regard
3 to the rights --

4 Q. Any -- any --

5 MR. MARRIOTT: Just -- I'm not sure he's
6 done with his answer. So I just want to make sure.
7 (MR. DAVIS THEN RE-ENTERED THE ROOM)

8 MR. MARRIOTT: If I'm wrong in
9 interrupting you, I apologize.

10 Are you done with your answer?

11 MR. GANT: I think you were, but you're
12 doing it in good faith. That's fine.

13 THE WITNESS: All I was saying is that
14 they -- I could talk about what they -- they
15 presented to us.

16 BY MR. GANT:

17 Q. But you would just be retransmitting what
18 they told you?

19 A. That's correct.

20 Q. You -- you don't have any personal

21 knowledge about what was actually in their heads?,

22 A. In their minds?

23 Q. Right.

24 A. No.

25 Q. Can you go down to the fifth line of

1 paragraph 16. It talks about -- actually, let's go
2 one line up and read the whole sentence. "I
3 understood that many of our licensees invested
4 substantial amounts of time, effort and creativity
5 in developing products based on UNIX System V."
6 When you use the phrase, "based on," there, what
7 are you describing?

8 A. I'm trying -- I'm talking about using the
9 software products. In this case specifically
10 UNIX VI and V, and there were others.

11 Q. It was your understanding that many
12 licensees used the software products of AT&T, as
13 defined in AT&T's license agreements, and in turn
14 created new products?

15 A. That's correct.

16 Q. The next line down. You use the word,
17 "appropriate." What do you mean by that? Is that
18 a word you would have used, or was that something
19 that the lawyers put there, and you just let go by?

20 MR. MARRIOTT: Objection as to form.

21 THE WITNESS: It was part of the
22 vernacular that we used. It goes by -- I don't
23 know where I first picked up the word, but we used
24 it.

25 BY MR. GANT:

1 Q. At AT&T?

2 A. At AT&T. Yeah.

3 Q. In connection with what?

4 A. Our licensees and trying to convey what we
5 mean.

6 Q. Did it come up, because AT&T didn't want
7 licensees to appropriate AT&T's intellectual
8 property?

9 MR. MARRIOTT: Objection as to form. I
10 think it's vague, but go ahead.

11 THE WITNESS: No. I don't -- I just think
12 that was the -- that's the proper word for what
13 we're -- we're describing here. I don't think that
14 was --

15 BY MR. GANT:

16 Q. Well, that wasn't my question. Would you
17 like it --

18 A. You said that AT&T -- go ahead.

19 MR. GANT: Could you read my question
20 back, please.

21 (PREVIOUS QUESTION THEN READ)

22 THE WITNESS: No.

23 BY MR. GANT:

24 Q. Was AT&T giving away its intellectual
25 property while you worked there?

1 MR. MARRIOTT: Objection as to form.

2 THE WITNESS: They were not.

3 BY MR. GANT:

4 Q. They were trying to protect it; correct?

5 A. That's correct.

6 Q. And they were trying to figure out how to
7 market it and make a profit; correct?

8 MR. MARRIOTT: Objection as to the form.
9 Vague.

10 THE WITNESS: At some point it evolved
11 into that. It was not the original intent.

12 BY MR. GANT:

13 Q. When did that evolution occur?

14 A. With the UNIX -- I guess with the UNIX
15 System V. Some of the predecessor stuff was always
16 licensed two or three versions older than the
17 current development within the laboratories.

18 And the reason we were able to do this was
19 that we were licensing software that a lot of folks
20 felt it was not leading edge, but that changed over
21 time as it became more and more popular.

22 Q. The objective of AT&T's UNIX licensing
23 program was to try and generate revenue and profit
24 for AT&T; correct?

25 A. Yes. That's what I'm saying. Yes. It

Page 257

1 evolved into that. Initially it was not.
 2 Q. Did anyone ask you or suggest to you that
 3 you leave AT&T in 1990 or '91, around the time when
 4 you left?
 5 A. I don't believe so.
 6 Q. Were you asked to leave?
 7 A. No.
 8 Q. Did you voluntarily resign?
 9 A. Yes, I did.
 10 Q. Did you get any kind of departure document
 11 that -- or did you submit a resignation letter?
 12 A. I actually retired. So there was not a
 13 letter submitted. No.
 14 Q. You're no longer authorized to speak on
 15 behalf of AT&T, I assume; is that correct?
 16 A. That's correct. Only to the extent, I
 17 guess, we're doing here. Yes.
 18 Q. Well, are you -- have you been authorized
 19 by AT&T to speak on its behalf during your
 20 deposition today?
 21 A. No, I have not.
 22 Q. Have you been authorized by AT&T to speak
 23 on its behalf in -- in your declarations submitted
 24 in this case?
 25 A. No.

Page 258

1 MR. MARRIOTT: Objection as to form.
 2 Q. Have you requested authorization or
 3 permission from AT&T to speak on behalf of AT&T in
 4 connection with this case?
 5 MR. MARRIOTT: Objection as to form.
 6 THE WITNESS: I have not.
 7 BY MR. GANT:
 8 Q. I'm sorry. Again?
 9 A. I have not.
 10 Q. Did you understand when you were employed
 11 by AT&T that you were an agent of the company?
 12 MR. MARRIOTT: Objection as to form.
 13 THE WITNESS: Yes, I did.
 14 BY MR. GANT:
 15 Q. And did you understand at the time that as
 16 an agent of AT&T it was your responsibility to try
 17 and protect and advance the best interests of AT&T?
 18 A. Yes, I did.
 19 Q. And did you always endeavor to do so?
 20 A. Yes, I did.
 21 Q. And was one of the ways that you did that
 22 to try and obtain the most advantageous license
 23 agreements for AT&T as possible?
 24 MR. MARRIOTT: Objection as to form.
 25 THE WITNESS: I'm not clear about what you

Page 259

1 mean, "most advantageous." I was -- I wanted to
 2 make sure that the -- our intent was to make sure
 3 that the software or intellectual property was
 4 protected.
 5 BY MR. GANT:
 6 Q. And was one of your objectives when
 7 entering into license agreements with licensees to
 8 make sure that the terms of the agreements were as
 9 favorable as you could obtain through the
 10 negotiation process?
 11 MR. MARRIOTT: Objection as to form.
 12 THE WITNESS: The way I'm understanding
 13 your question, I don't believe so, because the --
 14 the terms and conditions were pretty much set in a
 15 boilerplate, and any negotiation was usually just
 16 clarification to determine which software product
 17 someone needed. So there wasn't a specific
 18 negotiation with individual licensees that would be
 19 any different than the boilerplate standard
 20 agreement.
 21 BY MR. GANT:
 22 Q. Well, let's focus on the development of
 23 this so-called boilerplate for a moment. Am I
 24 correct that when that was developed by AT&T it was
 25 done with the purpose of trying to get a license

Page 260

1 agreement that was favorable to AT&T; correct?
 2 MR. MARRIOTT: Objection as to form.
 3 Vague, ambiguous.
 4 THE WITNESS: Yeah. When it was
 5 developed, it was -- the primary purpose was -- if
 6 you mean by favorable, that it protected the
 7 underlying intellectual property.
 8 So what I said earlier. It evolved out of
 9 the intellectual property licensing organization,
 10 and the agreements were designed to protect the
 11 underlying intellectual property, which was covered
 12 by that agreement.
 13 BY MR. GANT:
 14 Q. Protect AT&T's intellectual property?
 15 A. Yes. That's correct.
 16 Q. And at the same time try and generate
 17 revenue for AT&T; correct?
 18 MR. MARRIOTT: Objection as to form.
 19 THE WITNESS: Yes.
 20 BY MR. GANT:
 21 Q. Would AT&T have entered into license
 22 agreements related to its UNIX intellectual
 23 property that put it in a worse position than it
 24 would have been in if there had been no agreement
 25 at all?

MR. MARRIOTT: Objection as to form.
Lacks foundation, calls for speculation.

THE WITNESS: Would you read it again?
(PREVIOUS QUESTION THEN READ)

THE WITNESS: No.

BY MR. GANT:

Q. Can you look at paragraph 18 of your April 2004 declaration? Can you just quickly read it to yourself and let me know when you're finished, please?

A. (THE WITNESS COMPLIED)
Okay.

Q. In the first sentence you refer to antitrust issues. What do you mean by that?

A. I think we mentioned this morning, We talked about the environment under which AT&T and its operating companies operated under, defined in a 1956 consent decree, and then the breakup of the Bell system in 1983.

In both of those areas our main focus was communications. It was a communications business, and not any other business. And so the -- we first started by licensing software, and we were going to Jersey and talking about it.

And this was not a business that at the

time it originated that we wanted to be in, and it was clear it was not something we had been in traditionally.

This was software that was developed for our -- at Bell Laboratories for our switching systems and what have you. And so the original licensing program for this brand -- this product was a -- I guess a byproduct of other development.

Q. I take it that neither at the time, nor now, you had any specialized knowledge about antitrust issues; is that right?

A. No.

Q. It's not correct?

A. No. I did not have any specialized knowledge about --

Q. Did you rely on AT&T's lawyers to explain antitrust principles to you and how they might have related to UNIX work?

A. I would have. I don't remember asking those specific questions, but I would have -- had it come up, I would have definitely gone to the AT&T attorneys for that.

Q. Well, in paragraph 18 of your April 2004 declaration you describe a relationship between antitrust considerations and your understanding of

AT&T's UNIX licenses; isn't that right?

A. That's correct.

Q. And what was the basis for your understanding of that relationship?

A. Again, as I stated earlier, it was the environment that we were operating in at the time, and the events that preceded the 1983 break up, and then the issues that were -- from a general term and from reading management books about what happened in 1956.

Q. Did you rely on AT&T's lawyers to explain that relationship to you?

A. No, I did not.

Q. So this is just your layperson's understanding?

A. Yes.

Q. Can you take a look at paragraph 19. The second line from the bottom. You use the phrase, "fully owns." What do you mean by that? Is there a distinction in your mind between ownership and full ownership?

A. Just being emphatic that they -- they own, I guess. So the adverb is maybe not -- maybe it's not needed, but they --

Q. So there's no substantive significance to

the term, "fully," there; is that right?

A. As opposed to own?

Q. Right.

A. Right.

Q. Now, the first sentence after the block quote there says, "I understand this language" --

MR. MARRIOTT: "Stood." Sorry.

MR. GANT: "Understood." Thank you.

BY MR. GANT:

Q. "I understood this language to mean that IBM, not AT&T or USL, would have the right to control modifications and derivative works prepared by or for IBM. IBM," parenthetically, "like all licensees under the agreements," close parens, "fully owns any modifications and/or derivative works based on UNIX System V prepared by or for IBM, and can freely use, copy, distribute or disclose such modifications and derivative works, provided that IBM does not copy, distribute or disclose any material portions of the original UNIX System V source code provided by AT&T or USL."

Can you point me to the exact language in section 2.01 that supports the statement that I just read from paragraph 19 of your April 2004 declaration?

1 A. I cannot.
 2 Q. Because it doesn't say it expressly;
 3 correct?
 4 MR. MARRIOTT: Objection as to the form.
 5 THE WITNESS: That's correct.
 6 BY MR. GANT:
 7 Q. The second sentence after the block quote,
 8 where it says, "IBM, like all licensees under the
 9 agreements." When you said, "all," were you
 10 referring to even those licensees who only had
 11 signed and executed the standard software agreement
 12 with the original language from 2.01?
 13 A. No. I was talking about all licensees.
 14 Q. Okay.
 15 A. With and without the clarification.
 16 Q. Well, how is it that a provision that
 17 appeared in the side letter could affect the rights
 18 and obligations of a party who didn't enter into a
 19 side letter agreement?
 20 MR. MARRIOTT: Objection as to form. It's
 21 argumentative, calls for speculation. Actually, I
 22 withdraw the speculation. It's argumentative, and
 23 it's seeks a legal conclusion.
 24 You can answer.
 25 THE WITNESS: Yeah. The side letters were

1 not agreements. They were a clarification, and
 2 they were executed -- signed by -- by AT&T or my --
 3 by myself or -- or someone in my organization. In
 4 other words, it's not an agreement between the two.
 5 BY MR. GANT:
 6 Q. Is it your testimony that side letters
 7 weren't signed and executed by both parties?
 8 MR. MARRIOTT: Objection as to form.
 9 THE WITNESS: It depends on the content of
 10 the particular side letter. And, I guess, I was
 11 talking about clarifications, where we were just
 12 restating some of the language that was already in
 13 there. We provided those to the licensee.
 14 BY MR. GANT:
 15 Q. So there is more than one kind of side
 16 letter? There are some that just clarify, and
 17 there are some that change; is that your testimony?
 18 A. Yes.
 19 Q. And do some of those require signatures
 20 and others not --
 21 MR. MARRIOTT: Objection as to --
 22 Q. -- from licensees?
 23 MR. MARRIOTT: Objection as to form.
 24 Lacks foundation.
 25 THE WITNESS: Yes.

1 BY MR. GANT:
 2 Q. Okay. And which ones require signatures
 3 from licensees?
 4 A. The one like in attachment four --
 5 Exhibit 4 (SIC).
 6 Q. Uh-huh.
 7 A. It was a clarification that we provided to
 8 IBM, which required them to execute that they
 9 understood the content. And that was mainly from
 10 the standpoint of what we had negotiated with them.
 11 So it was executed by both parties.
 12 Q. Let me make sure I'm understanding you.
 13 The document at tab four to your April 2004
 14 declaration is a side letter entered into by IBM
 15 and AT&T; correct?
 16 A. That's correct.
 17 Q. And they are the only parties to that side
 18 letter agreement; correct?
 19 A. That's correct.
 20 Q. And the rights and obligations set out in
 21 that document relate to IBM and AT&T only; correct?
 22 MR. MARRIOTT: Objection as to form.
 23 Lacks foundation, calls for speculation, seeks a
 24 legal conclusion from a lay witness.
 25 THE WITNESS: Specific to this letter,

1 yes. It only pertains to IBM and AT&T.
 2 BY MR. GANT:
 3 Q. Now, what is your understanding, if any,
 4 about why both IBM and AT&T signed the side letter
 5 at tab four to your April 2004 declaration?
 6 A. It shows that both parties agreed to the
 7 content of that side letter.
 8 Q. And it was important that both parties
 9 acknowledged that?
 10 MR. MARRIOTT: Objection as to form.
 11 THE WITNESS: Yes.
 12 BY MR. GANT:
 13 Q. Now, let's look at the block quote in
 14 paragraph 19. This is a quotation from the IBM
 15 side letter at tab four; correct?
 16 A. Yes.
 17 Q. Now, in the second sentence after the
 18 block quote in paragraph 19 you say that, "IBM,
 19 like all licensees under the agreement, fully own
 20 any modifications of" -- "and derivative works
 21 based on UNIX System V prepared by or for IBM."
 22 Is that statement based on the language of
 23 section 2.01, as set out in the IBM side letter?
 24 A. Yes, it is.
 25 Q. Okay. Please explain to the jury how it

1 is that language that appears in the side letter
 2 entered into only by AT&T and IBM may have altered
 3 the rights or obligations of licensees who weren't
 4 a party to that side letter?
 5 MR. MARRIOTT: Objection as to form.
 6 Lacks foundation, argumentative, seeks a legal
 7 conclusion from a lay witness.
 8 If you can answer, Mr. Wilson, please, do.
 9 THE WITNESS: You said speak to the jury?
 10 BY MR. GANT:
 11 Q. Well, you're on videotape. You understand
 12 that? And do you understand that your testimony
 13 may be played before the jury in this case?
 14 A. Okay.
 15 Q. So that --
 16 A. I understand.
 17 Q. That's what I was referring to.
 18 A. Okay.
 19 Q. Just --
 20 MR. MARRIOTT: Explain to the jury. So
 21 answer the question, if you can.
 22 MR. GANT: That's -- that's how this case
 23 should be resolved.
 24 And I'd like Mr. Wilson to explain his
 25 position to the jury. So why don't we read back my

1 question, so that he can do his best. Thank you.
 2 (PREVIOUS QUESTION THEN READ)
 3 MR. MARRIOTT: Objection as to the form.
 4 My objections -- I don't know if that's a new
 5 question or what, but objection as to form.
 6 Go ahead, if you can answer.
 7 THE WITNESS: It was our policy that
 8 any -- any clarification, modification or change to
 9 the basic software agreement provided for one
 10 licensee was available to all licensees. And once
 11 we did that, we made sure that our -- our staff
 12 conveyed that.
 13 In some cases in the way of a side letter
 14 to licensees that requested it or through a --
 15 through publication or through telephone calls, but
 16 our practice was that any negotiated change,
 17 clarification to the software agreements was
 18 available to all of our licensees, as well as
 19 the -- the pricing structure and so -- what have
 20 you. It was always available to everyone.
 21 BY MR. GANT:
 22 Q. Okay. You referred to this as a policy or
 23 a practice; is that correct?
 24 A. Yes.
 25 Q. You acknowledge that -- strike that.

1 AT&T through some policy or practice
 2 couldn't unilaterally alter the rights or
 3 obligations of a licensee, could it?
 4 MR. MARRIOTT: Objection as to form.
 5 Lacks foundation, calls for speculation, seeks a
 6 legal conclusion from a lay witness.
 7 If you can answer that question,
 8 Mr. Wilson, go ahead.
 9 THE WITNESS: Yeah. They could not -- no.
 10 We could not unilaterally alter the rights granted
 11 to our licensees. No. We could not do that.
 12 BY MR. GANT:
 13 Q. And you said that -- strike that.
 14 Is it your testimony, Mr. Wilson, that the
 15 side letter entered into by AT&T and IBM, which is
 16 attached as tab four to your April 2004
 17 declaration, had no effect on the rights or
 18 obligations of either AT&T or IBM?
 19 MR. MARRIOTT: Can I hear the question
 20 again, please.
 21 (PREVIOUS QUESTION THEN READ)
 22 MR. MARRIOTT: Objection as to form.
 23 Lacks foundation, calls for speculation, seeks a
 24 legal conclusion from -- from a lay witness.
 25 THE WITNESS: It did alter it.

1 BY MR. GANT:
 2 Q. It did alter the rights and obligations
 3 of --
 4 A. In some -- yeah. In some cases. In other
 5 words, it -- because I -- I go back and look at the
 6 letter. Some of the clarifications in there and
 7 the extension to other countries was not in the
 8 original document. And going by your earlier
 9 question, in other words, it -- it had to be
 10 acknowledged by both parties.
 11 Q. The AT&T/IBM side letter was more than a
 12 clarification; correct?
 13 MR. MARRIOTT: Objection as to form.
 14 THE WITNESS: Yes.
 15 BY MR. GANT:
 16 Q. Can you look at paragraph 20 of your
 17 declaration? This is the April 2004 declaration.
 18 A. (THE WITNESS COMPLIED)
 19 Q. The fourth line down. You use the phrase,
 20 "material portions." Do you see that at the end of
 21 the fourth line?
 22 A. On page nine?
 23 Q. Yeah. That's right. Paragraph 20, four
 24 lines down.
 25 A. I don't see that word.

Page 273

1 Q. Do you see paragraph 20?
 2 A. Yes.
 3 Q. It begins, "Clarifications of the kind"?
 4 A. The fourth --
 5 Q. Down four lines. The line begins, "and
 6 derivative works." Do you see that?
 7 A. Yes.
 8 Q. At the end of it you use the phrase,
 9 "material portions"?
 10 A. Uh-huh.
 11 Q. Referring to original UNIX System V code?
 12 A. Yes.
 13 Q. What did you mean by the phrase,
 14 "material" -- by the term, "material"?
 15 A. We were not trying to -- some of our
 16 licensees developed application software, and some
 17 cases used the algorithms in the code that
 18 supported those algorithms or an input or what they
 19 called BIOS in the software for the -- for the
 20 operating system to be compiled into their -- into
 21 an application.
 22 In those cases a lot of time it was an
 23 insignificant amount of code that was actually
 24 included in the application, as opposed to a major
 25 turnover of some -- some -- some part of the

Page 274

1 operating system.
 2 Q. I see. So --
 3 A. The material -- the difference between the
 4 material was something substantive, as opposed to a
 5 few lines of code to be brought into the
 6 compilation.
 7 Q. "Something substantive." What do you mean
 8 by that?
 9 A. Something more than, as I said earlier,
 10 maybe a sort algorithm or a BIOS process that was
 11 used in the operating system that was more
 12 efficient to include with their application, as
 13 opposed to adding it to the application. They
 14 would pull it in on -- on execution from the
 15 operating system.
 16 Q. Can you show me where in the side letter
 17 there is express language setting forth the idea
 18 that you have set forth in paragraph 20 of your
 19 April 2004 declaration about an exception for a,
 20 quote, unquote, "material portion of original UNIX
 21 System V code"?
 22 A. No.
 23 Q. It's not in the side letter?
 24 A. No.
 25 MR. MARRIOTT: Objection as to form.

Page 275

1 Q. Can you turn to page ten of your April
 2 2004 declaration, please?
 3 A. (THE WITNESS COMPLIED)
 4 Q. Before I direct you to anything specific
 5 in the declaration, I have a general question for
 6 you. Do you know whether AIX is a derivative work
 7 or a modification of UNIX?
 8 A. I personally don't know. I do not.
 9 Q. Under the software agreements between AT&T
 10 and IBM, was IBM supposed to make any kind of
 11 payments to AT&T for the rights to use, in the
 12 respect set out in their agreements, UNIX code and
 13 software products as defined in the -- strike that.
 14 Under the software agreements -- well,
 15 strike that. Let's try again. Take three.
 16 Under the UNIX license agreements entered
 17 into by AT&T and IBM, was IBM obligated to make
 18 some payments to AT&T?
 19 A. Yes, they were.
 20 Q. Were you involved in any way in tracking
 21 or ensuring that payment was made by IBM?
 22 A. Yes.
 23 Q. And what was your involvement in that?
 24 A. The -- they had to identify the use that
 25 they were using the source code for, and our

Page 276

1 license provided for what was known as designate
 2 CPUs, and they had to reveal those to us. And then
 3 the subsequent payments were all -- were detailed
 4 in the agreement, where they were to be sent.
 5 Q. How often did IBM make royalty payments to
 6 AT&T?
 7 A. They were required quarterly.
 8 Q. Did IBM send any kind of statements or
 9 paperwork to AT&T in connection with the payment of
 10 royalties to AT&T?
 11 A. I was not involved in that aspect of it.
 12 I'm -- I know they did, but I was not -- I don't
 13 have any direct knowledge.
 14 Q. Did you ever have occasion to see any kind
 15 of documents relating to those payments?
 16 A. Only with regard to the -- the payment
 17 structure and the designates CPU for the source
 18 code. As far as the sublicensing fees and things,
 19 those came into our accounting area.
 20 MR. GANT: Let's mark as Exhibit 79 -- why
 21 don't I let you do it.
 22 (DEPOSITION EXHIBIT NUMBER 79 WAS MARKED
 23 FOR IDENTIFICATION)
 24 BY MR. GANT:
 25 Q. Do you have Exhibit 79 in front of you,

1 sir?
 2 A. Yes.
 3 Q. Do you see that your name appears on here
 4 under an attention line. "Attention: Mr. O.L.
 5 Wilson, division manager"?
 6 A. Yes.
 7 Q. Is that you?
 8 A. Yes.
 9 Q. Would -- do you recognize Exhibit 79 as an
 10 example of a document you would have received from
 11 IBM related to the payment of royalties by IBM to
 12 AT&T?
 13 A. These documents went straight to
 14 accounting. I don't remember -- I don't recall
 15 actually seeing these particular reports.
 16 Q. Even though they were directed to your
 17 attention --
 18 A. That's correct.
 19 Q. -- they went straight to accounting?
 20 A. Uh-huh.
 21 Q. Is the address of AT&T on here correct?
 22 Was that the address of AT&T at the time?
 23 A. I'm sure it is. It would be in the --
 24 MR. MARRIOTT: The only address I have is
 25 a P.O. box. Is that what you're referring to?

1 MR. GANT: Yes.
 2 THE WITNESS: Yes. That's correct.
 3 BY MR. GANT:
 4 Q. That is the correct address for AT&T in
 5 approximately June of 1987?
 6 A. Yes. And I'll point out it shows that
 7 the -- the payments went through our Charlotte
 8 office, where we were residing in Greensboro.
 9 Q. So the information on this document is
 10 consistent with your understanding of how payments
 11 were made by IBM to AT&T at the time?
 12 A. Yes, it is.
 13 Q. Do you have any reason to doubt that this
 14 is an authentic version of a document that AT&T
 15 received from IBM?
 16 MR. MARRIOTT: Objection as to form.
 17 THE WITNESS: No. I don't have any reason
 18 to doubt it.
 19 BY MR. GANT:
 20 Q. And when I ask that, I'm excluding the
 21 information at the very top and the very bottom.
 22 The top is obviously a fax banner, where we got
 23 this document transmitted. I assume you were
 24 ignoring that when you answered my question?
 25 A. That's correct.

1 Q. And I assume you were also ignoring the
 2 numbers, the -- labeled confidential on the bottom
 3 and the number on the right, which relates to the
 4 document production in this case?
 5 A. Yeah.
 6 Q. The very bottom right?
 7 A. Yes.
 8 Q. And, of course, the exhibit number as
 9 well; right?
 10 A. Yes, yes, yes.
 11 Q. You referred earlier to the way in which
 12 AT&T used the term made available to licensees
 13 changes in the software agreements, even though
 14 licensees may have not actually entered into
 15 agreements. Do you remember describing that
 16 earlier?
 17 MR. MARRIOTT: Objection as to form.
 18 THE WITNESS: Could you be more
 19 specific -- yeah, I remember --
 20 BY MR. GANT:
 21 Q. Well, I just want to sort of orient you
 22 to --
 23 A. Okay.
 24 Q. -- the discussion.
 25 A. I'm oriented. Yes.

1 Q. Okay. Great. Thanks.
 2 Was it AT&T -- strike that.
 3 Is it your testimony that AT&T kept making
 4 modifications to its UNIX license agreement
 5 language more favorable for licensees and was
 6 extending to them the benefits of those changes?
 7 MR. MARRIOTT: Objection as to form.
 8 Lacks foundation, vague.
 9 THE WITNESS: We were making sure that the
 10 agreements reflected the needs of our licensees,
 11 and, actually, they would be more favorable for
 12 what they were trying to do with the -- with the
 13 software products.
 14 And bear in mind we had different
 15 licensees for the same software product, who had
 16 different pursuits with the software products. So,
 17 I guess, everything from educational,
 18 administrative, to all of the way to the government
 19 and -- and commercial licensees. So they were
 20 different. So some of the terms were favorable to
 21 others. Others they didn't really matter.
 22 BY MR. GANT:
 23 Q. And its your testimony that AT&T was
 24 willing to allow some licensees to in effect
 25 benefit from agreements they didn't enter into

Page 281

1 without getting paid additional money by those
2 licensees?
3 MR. MARRIOTT: Objection as to form.
4 THE WITNESS: You mean by -- without the
5 licensees paying AT&T additional dollars?
6 BY MR. GANT:
7 Q. Correct.
8 A. That's correct.
9 Q. Was that a -- strike that.
10 If that's what occurred, was that
11 something that was in the best interest of AT&T, to
12 grant more rights to licensees without getting
13 anything in return?
14 MR. MARRIOTT: Objection as to form.
15 Calls for speculation, lacks foundation.
16 THE WITNESS: I'm trying to think of the
17 things that we -- we modified and changed. What
18 was a basis for the revenue was designated CPUs and
19 object code versions, which were sublicensed.
20 And, to the best of my recollection, any
21 of the changes we did might have extended the area
22 in which they could use the software or sublicense
23 the software, and with that was associated revenue
24 stream.
25 (DISCUSSION OFF THE RECORD)

Page 282

1 BY MR. GANT:
2 Q. Let's look at paragraph 25 of your
3 declaration, and we're in the April 2004
4 declaration now. Paragraph 25. There's a sentence
5 after the block quote, where it says, "As we
6 communicated at our seminars in our" -- "and in our
7 newsletters to UNIX System V licensees, this new
8 language was intended only to clarify the language
9 in the original section 2.01, not change its
10 meaning." Do you see that?
11 A. Yes, I do.
12 Q. Did any AT&T lawyer ever tell you that
13 this alteration in the language of section 2.01 did
14 not change its meaning?
15 MR. MARRIOTT: Just object here,
16 Mr. Wilson. My -- my advice to you, Mr. Wilson, is
17 not to reveal the advice you've been provided, if
18 any, by -- by your counsel, me, and I -- I -- my
19 recommendation would be to you to respect the
20 privilege of AT&T, but you'll make what choice you
21 wish to make.
22 MR. GANT: I respectfully suggest that
23 horse left the barn a long, long time ago.
24 MR. MARRIOTT: Well, that's an interesting
25 little catchy phrase, but I disagree with it,

Page 283

1 and -- and, unlike you, who has several times asked
2 questions that seem to suggest no particular care
3 for the privilege, I do wish to respect it.
4 So Mr. Wilson can make what decision he
5 wants, and perhaps he has nothing to say, but
6 that's -- that will be for him to decide.
7 But my advice to you would be to respect
8 the privilege and not to disclose legal advice that
9 you may have received from the lawyers of AT&T, but
10 you make the decision you wish to make, Mr. Wilson.
11 BY MR. GANT:
12 Q. Mr. Wilson, you understand that this case
13 involves litigation between my client and IBM? You
14 understand that?
15 A. Yes.
16 Q. And do you understand that the matters at
17 issue in the litigation are serious and important
18 to all parties?
19 A. Yes.
20 Q. And, I take it, that it has not escaped
21 you that IBM is attempting to use your testimony in
22 a way that is disadvantageous to my client, the
23 plaintiff in this case; do you understand that?
24 MR. MARRIOTT: Objection. That's --
25 that's argumentative. That's -- that's

Page 284

1 inappropriate, and I think you ought not to be
2 asking questions like that.
3 If you can answer the question, go ahead,
4 Mr. Wilson.
5 THE WITNESS: I never thought about it
6 that way. I mean I think the -- either side could
7 have contacted me, and they just -- in my opinion,
8 they just contacted me first. So I mean I would do
9 the same thing. I don't think my testimony would
10 change depending on who was deposing me.
11 BY MR. GANT:
12 Q. Well, let me ask you then right now. Are
13 you willing to meet with attorneys for SCO and to
14 sit down with us and talk about your experiences at
15 AT&T and the issues in this case, so that we can
16 get a better understanding of -- of what went on at
17 AT&T and what your involvement was? Are you willing
18 to do that, sir?
19 MR. MARRIOTT: As I advised you, Counsel,
20 at the beginning of the deposition, Mr. Wilson has
21 indicated to me that he wishes to be available for
22 a seven hour -- let me finish, Counsel. He wishes
23 to be available for seven hours of deposition.
24 My advice to Mr. Counsel -- to Mr. Wilson
25 is that that -- that be the time he makes himself

1 available, and I would -- you know, I think that's
2 not an appropriate question.
3 And I think, Mr. Wilson, that's a question
4 you should answer after we've had an opportunity to
5 consult and I let you know what your options are
6 with respect to that.
7 MR. GANT: Are you instructing him not to
8 answer the question?
9 MR. MARRIOTT: Did I say that, Counsel?
10 MR. GANT: Well, you just advised him not
11 to answer until you've had a chance to confer. So
12 I'm trying to understand what you mean.
13 MR. MARRIOTT: Well, if you'd let me
14 finish -- do you want -- why don't we take a
15 minute, and we'll confer.
16 MR. DAVIS: Actually, the tape is almost
17 over.
18 MR. MARRIOTT: Well, that makes it better.
19 MR. DAVIS: So you can take more than a
20 minute.
21 MR. MARRIOTT: So we'll take a minute and
22 confer.
23 MR. GANT: Okay.
24 THE VIDEOGRAPHER: One moment.
25 This marks the ends of tape number three

1 in the deposition of Otis Wilson. Going off the
2 record. The time is 4:57 p.m.
3 (RECESS TAKEN AT 4:57 P.M. TO 5:09 P.M.)
4 THE VIDEOGRAPHER: Back on the record.
5 Here marks the beginning of tape number four in the
6 deposition of Otis Wilson. The time is 5:09 p.m.
7 Please, continue.
8 MR. MARRIOTT: Okay. We went off the
9 record to consider two -- two issues. The first is
10 the question of questioning concerning
11 communications that Mr. Wilson may have had with
12 lawyers at AT&T.
13 I've instructed Mr. Wilson that he should
14 not disclose the content of his communications
15 with -- with the lawyers at AT&T, insofar as it
16 would disclose their legal advice or -- or his
17 request for legal advice of them.
18 However, I think he can -- he may be able
19 to answer your question, as it was framed, without
20 raising issues. So you can try that, and we'll
21 see, and maybe that just goes away.
22 The second -- the second concern is you
23 had asked whether or not Mr. Wilson will -- now
24 having spent the day being deposed by you and by --
25 by me, spend additional time talking to you.

1 Mr. Wilson has indicated to me, and you're
2 free to ask him yourself, that he will take the
3 request under advisement and get back to you
4 through me, his counsel. So, with that said, I
5 think you can proceed with your questions, and
6 we'll see if we can --
7 MR. GANT: Okay.
8 MR. MARRIOTT: -- move this along.
9 BY MR. GANT:
10 Q. Let's just -- with respect to the second
11 issue that you just mentioned, Mr. Wilson, has
12 Mr. Marriott accurately reflected your position
13 about whether or not you're willing to meet with
14 counsel for SCO?
15 A. Yes.
16 Q. And you'll take it under advisement and
17 let Mr. Marriott know, who will in turn let us
18 know; correct?
19 A. That's correct.
20 Q. Okay. Let me try again, because I think
21 my question does not implicate privilege issues.
22 This is a question I asked you several minutes ago.
23 Did any AT&T lawyer ever tell you that the
24 alteration in the language of section 2.01, which
25 is set forth in paragraph 25 of your April 2004

1 declaration, did not change the meaning of section
2 2.01 as it was previously written?
3 A. They did not.
4 Q. Could you turn to page --
5 MR. GANT: Actually, there was one other
6 question pending, which was -- and I'd like it read
7 back, since it was long, and I'll never remember
8 it. And it was the question --
9 MR. MARRIOTT: Well, we have to find it.
10 THE WITNESS: Well, can you -- do you have
11 a word search on there? It's the question about
12 whether he understood -- Mr. Wilson understood
13 that -- Counsel, I'm not trying to make it --
14 MR. MARRIOTT: Why don't you just ask it
15 again? We'll just --
16 MR. GANT: All right. I'll try.
17 MR. MARRIOTT: I don't even remember what
18 you're talking about.
19 MR. GANT: This was the question about
20 Mr. Wilson's understanding with respect to the use
21 of his declaration.
22 MR. MARRIOTT: Oh, you mean -- why don't
23 you just ask your question again. Hopefully in a
24 little fairer light.
25 THE WITNESS: I remember the question.

1 BY MR. GANT:
 2 Q. You do?
 3 A. Yeah. And I answered -- yes. You were
 4 saying -- well, go ahead.
 5 Q. Okay.
 6 A. It's not my job.
 7 MR. MARRIOTT: I'm not sure what -- that
 8 we understand what the question is, and I think
 9 you -- I don't know if he answered or not. So
 10 just -- either go back and read it --
 11 Q. Try and keep my question in mind, because
 12 I expected a lengthy objection from Mr. Marriott.
 13 My question is whether it was your understanding
 14 before today's deposition that IBM intended to use
 15 the declarations that you executed in this case in
 16 a way that would disadvantage my client, The SCO
 17 Group, in this litigation?
 18 MR. MARRIOTT: Objection as to form.
 19 THE WITNESS: No. That was not my
 20 understanding.
 21 BY MR. GANT:
 22 Q. You had no understanding with respect to
 23 that?
 24 A. With respect to the entire sentence, I --
 25 no, I did not. I -- I thought that the -- it could

1 be used as a document, you know, my declaration.
 2 Q. You didn't know whether it would --
 3 A. Advantage or disadvantage, no.
 4 Q. Correct.
 5 What is AIX?
 6 A. I really don't know. I mean it's the
 7 brand name used for a version of the operating
 8 system of one of our licensees. In this case, IBM.
 9 They call their operating version of the operating
 10 system AIX.
 11 Q. What is Dynix?
 12 A. The same thing. It's a brand name for one
 13 of the licensees in this case.
 14 Q. What's your understanding of the
 15 relationship between -- strike that.
 16 What is your understanding, if any, of the
 17 relationship between AIX and UNIX?
 18 A. Most of our -- well, between --
 19 specifically between AIX and UNIX -- in other
 20 words, that was the -- the IBM flavor of the
 21 operating system, known as UNIX System V.
 22 Q. When you were with AT&T working on UNIX
 23 licensing issues, isn't it the case that IBM would
 24 sometimes communicate to you and describe AIX as a
 25 derivative of UNIX?

1 A. I don't recall the exact conversation, but
 2 that -- or when it actually occurred, but that's
 3 the way it was communicated. Yes.
 4 Q. That's the way it was communicated to you?
 5 A. Uh-huh. AIX was their version of UNIX
 6 System V.
 7 Q. And that AIX was a derivative of UNIX or
 8 derived from UNIX?
 9 MR. MARRIOTT: Objection as to form.
 10 THE WITNESS: Yes. It was based on that.
 11 BY MR. GANT:
 12 Q. Can you take a look at page 12 of our
 13 April 2004 declaration? Do you have that, sir?
 14 A. Yes. It's page 12. Uh-huh.
 15 Q. Yes.
 16 These paragraphs both refer to claims by
 17 the plaintiff in this case; isn't that correct?
 18 A. Yes.
 19 Q. And Mr. Marriott asked you earlier today
 20 about your understanding of the plaintiff's claims,
 21 and I believe you testified that you've never read
 22 the Complaint in this case; is that right?
 23 A. That's correct.
 24 Q. And that -- other than what you were told
 25 by your counsel, who are also counsel for IBM, you

1 have no independent knowledge about any of the
 2 specific allegations in this case; is that right?
 3 A. That's correct. There was an article in
 4 the newspaper one time, I believe, but that was
 5 very general.
 6 Q. So any views that you may have expressed
 7 in the declaration that might be construed as an
 8 opinion about the merits of this case are only
 9 based on what you were told by counsel for IBM;
 10 correct?
 11 MR. MARRIOTT: Objection as to form.
 12 Lacks foundation, misleading.
 13 THE WITNESS: That's correct.
 14 BY MR. GANT:
 15 Q. Could you look at paragraph 29 on the
 16 third line. Do you see the term, "exporting,"
 17 there?
 18 A. Uh-huh.
 19 Q. Is it your understanding that the standard
 20 software agreement placed some limitations on
 21 exporting UNIX code?
 22 A. Yes. It -- it was silent, but, yes, it
 23 did. Correction. Yes. Yes, it did.
 24 Q. And were there limitations on IBM's
 25 ability -- strike that.

Page 293

1 Were there restrictions on IBM's right to
2 export UNIX code to other countries?

3 MR. MARRIOTT: Objection as to form.

4 THE WITNESS: Yeah. That's what I thought
5 you meant earlier, when you said exporting it out
6 of the country. Yes. The original licenses were
7 for use in the United States.

8 BY MR. GANT:

9 Q. Did the side letter grant IBM the right to
10 distribute certain material outside of the
11 United States?

12 A. Yes, it did.

13 Q. What document did that -- the side letter?

14 A. The side letter.

15 Q. Could you take a look at the side letter,
16 which is behind tab four. Do you see that?

17 A. Yes, I do.

18 Q. And am I correct that paragraph A.1 on the
19 first page of the side letter specified the
20 countries to which IBM could distribute certain
21 UNIX material; is that right?

22 MR. MARRIOTT: Objection as to the form.

23 As of that day, I assume, you're --

24 MR. GANT: That's correct.

25 THE WITNESS: That's correct.

Page 294

1 BY MR. GANT:

2 Q. Now, is India listed as one of those
3 countries?

4 A. I didn't realize what a poor copy -- I see
5 you're trying to read it too. I don't believe so.

6 Q. If there was no further amendment to the
7 agreement between AT&T and IBM about distribution
8 of UNIX material outside of the United States,
9 would IBM have been permitted to distribute or
10 disseminate any UNIX material to India?

11 MR. MARRIOTT: Objection as to the form.
12 Lacks foundation, calls for speculation, seeks a
13 legal conclusion from a lay witness.

14 THE WITNESS: I would think not. In other
15 words, they were specifically restricted to the
16 United States, and then this amendment extended to
17 these countries specified here.

18 BY MR. GANT:

19 Q. That's what the side letter sets out?

20 MR. MARRIOTT: Objection as to the form.

21 THE WITNESS: Yes.

22 BY MR. GANT:

23 Q. And unless the side letter was amended or
24 superseded, that limitation would have remained in
25 place?

Page 295

1 MR. MARRIOTT: Same objections.

2 THE WITNESS: Yes.

3 BY MR. GANT:

4 Q. Could you take a look at Exhibit 75, which
5 is your December 2003 declaration. In particular,
6 page six, paragraph 14. Do you see that?

7 A. Yes.

8 Q. Mr. Marriott asked you some questions
9 about this paragraph earlier today. He directed
10 you specifically to the term method and concepts on
11 the third line. Do you see that?

12 A. Yes.

13 Q. Do you know why your counsel, who are also
14 counsel for IBM, deleted this passage from your
15 declaration when they generated a new version of
16 it, which you ultimately executed in April of 2004?

17 MR. MARRIOTT: Objection to the form. I
18 think that's been asked and answered several times.

19 THE WITNESS: I do not. No, no.

20 BY MR. GANT:

21 Q. You don't know why?

22 A. Huh-huh.

23 Q. Can you turn to the next page, page seven,
24 paragraph 16. On the third line there, do you see
25 there's a reference to source code?

Page 296

1 A. Yes.

2 Q. And do you recall when you testified
3 earlier today in response to a question from
4 Mr. Marriott that that actually should have said,
5 "software product," instead of, "software code;" do
6 you recall that?

7 MR. MARRIOTT: Objection as to -- can I
8 have the question back.

9 You may have misspoke.

10 MR. GANT: I don't think so.

11 MR. MARRIOTT: Maybe not. We'll find out.

12 Would you read the question back, please.

13 (PREVIOUS QUESTION THEN READ)

14 MR. GANT: I did misspeak. Let me
15 change -- let me try the question again.

16 BY MR. GANT:

17 Q. Do you recall testifying earlier today
18 that the third line of paragraph 16 of your
19 December 2003 declaration should have said,
20 "software product," rather than, "source code"?

21 A. Yes.

22 Q. Now, before you gave that testimony you
23 had previously testified that there was nothing you
24 would want to change in your declaration. Do you
25 recall that testimony?

1 (Pages 293 to 296)

1 A. Yes, I do.
 2 Q. I take it that your testimony was truthful
 3 when you said that there was nothing else that you
 4 would want to change in your declarations. Am I
 5 right about that?
 6 A. That's correct.
 7 Q. And you simply missed something, and there
 8 was an error in your declaration that you didn't
 9 catch; is that correct?
 10 A. That's correct.
 11 Q. And it's the case, isn't it, that there
 12 may be other errors in your declarations that you
 13 simply have not yet caught; am I correct about
 14 that?
 15 MR. MARRIOTT: Objection as to form. It
 16 calls for speculation.
 17 THE WITNESS: Yes, there could be.
 18 BY MR. GANT:
 19 Q. Could you turn to page 13 of your December
 20 declaration, please?
 21 MR. MARRIOTT: I'm sorry. Could you say "
 22 that again? Page --
 23 MR. GANT: 13, of the December
 24 declaration.
 25 BY MR. GANT:

1 Q. There are references to paragraphs on this
 2 page -- actually, let me back up.
 3 The end of paragraph 32 -- rather, it's
 4 the end of paragraph 31, which appears at the top
 5 of page 13, refers in a few places to trade
 6 secrets. Do you see that?
 7 A. Yes.
 8 Q. What do you mean by the term trade secret?
 9 A. We treated this intellectual property, in
 10 which is source code, and the associated materials
 11 with the software product, as a trade secret under
 12 the covenants of the trade secret law. That's how
 13 we used to protect it, as opposed to copyright or
 14 patent.
 15 Q. While you were at AT&T, AT&T considered
 16 its UNIX material as covered by trade secret law?
 17 MR. MARRIOTT: Objection as to form.
 18 THE WITNESS: Yes. Most of it was covered
 19 by trade secret. There were some things that were
 20 copyrighted. There were some subsets of the code
 21 that was actually covered by a patent. And I can't
 22 recall exactly what, but I do know we had some
 23 specific sub -- subsets of the code that was
 24 covered by a patent.
 25 BY MR. GANT:

1 Q. It would be the attorneys at AT&T who
 2 would be in the best position to provide
 3 information about what UNIX intellectual property
 4 was covered by trade secrets, which of it was
 5 covered by copyright and which of it was covered by
 6 patent?
 7 MR. MARRIOTT: Objection as to form.
 8 Lacks foundation, calls for speculation.
 9 THE WITNESS: It would probably be someone
 10 in our licensing group or in our development group,
 11 who had the patent issue, who copyrighted the
 12 order.
 13 MR. MARRIOTT: Let me just interject,
 14 Counsel. I recognize you have a different view,
 15 but by my count your -- your allotted time is -- is
 16 up. So in order to, I think, at least respect the
 17 spirit of our agreement, which is that we would
 18 each undertake to take three and a half, I'd just
 19 urge you to try to -- try to wrap it up, so that I
 20 can ask whatever follow-up I have.
 21 MR. GANT: I will do my best, and I
 22 certainly won't take the position that you can't
 23 complete your redirect. So I'll do my best to move
 24 along.
 25 BY MR. GANT:

1 Q. Your declaration refers to GPL, General
 2 Public License; isn't that right?
 3 A. Yes.
 4 Q. How familiar are you with the GPL?
 5 A. Not very. I just read through it. It's
 6 not very lengthy.
 7 Q. Had you ever read through the GPL before
 8 you met with counsel for IBM?
 9 A. No.
 10 Q. So they brought it to your attention?
 11 A. That specific agreement, they did. Yes.
 12 Q. And did counsel for IBM ask you to cover
 13 in your declaration statements about the GPL?
 14 A. No.
 15 Q. How did it end up in your December
 16 declaration?
 17 A. We talked about that during the meeting
 18 that we had here in Greensboro, the second -- the
 19 first -- after the telephone call, the first
 20 meeting in Greensboro.
 21 Q. What -- what was discussed with respect to
 22 the GPL?
 23 A. As an example of a public, free software
 24 type agreement.
 25 Q. In paragraph 32 you refer to possible ways

1 in which UNIX source code may have become available
2 to the general public; is that right?

3 A. Yes.

4 Q. Am I correct that the six items listed in
5 paragraph 32 are examples of possible ways; is that
6 correct?

7 A. That's correct.

8 Q. And you don't have personal knowledge
9 about whether any of these things have actually
10 occurred, do you?

11 MR. MARRIOTT: Objection as to form.

12 THE WITNESS: No. I don't have any
13 personal knowledge of any of this. Let me -- I
14 don't have any direct knowledge, except what I
15 talked about earlier, with AT&T Capital -- AT&T
16 Corp., what they did.

17 BY MR. GANT:

18 Q. No personal knowledge?

19 A. Huh-huh.

20 MR. MARRIOTT: Except with the exception
21 that he provided.

22 MR. GANT: Well, he earlier testified that
23 that wasn't personal knowledge either. If you have
24 an objection, just state it.

25 MR. MARRIOTT: Well, if you'd just quit

1 Q. If you could, look at paragraph three --
2 excuse me 33, on page 13, of your December
3 declaration. That carries over to page 14. If you
4 could, flip the page for me. Three lines down, you
5 say, "Based solely on the breadth of its
6 distribution I believe it is unlikely that there
7 are many, if any, parts of the UNIX System V source
8 code that could be said still to be confidential."

9 Do you see that, sir?

10 A. Yes, I do.

11 Q. When you say, "unlikely," are you
12 qualifying it in that way, because you don't
13 actually have personal knowledge about whether or
14 not many, if any, parts of the UNIX System V source
15 code could still be said to be confidential?

16 A. That's correct.

17 Q. Could you turn to page 15, paragraph 37?

18 A. (THE WITNESS COMPLIED)

19 Q. Do you remember Mr. Marriott asked you
20 some questions about the Lions' book?

21 A. Yes, I do.

22 Q. And I believe you testified, and, please,
23 correct me if I'm misspeaking, but you said that
24 you were familiar with the book; do you recall
25 that?

1 misrepresenting the testimony, I wouldn't have any
2 objections. So --

3 MR. GANT: Well, if you believe that
4 misrepresented the testimony --

5 MR. MARRIOTT: I do.

6 MR. GANT: -- then just say,
7 mischaracterizes the testimony.

8 MR. MARRIOTT: I appreciate your legal
9 advice, as to how I should defend him, but I object
10 to the testimony, because I think it misstates --
11 the question, rather, because I think it misstates
12 the testimony. Go ahead.

13 MR. GANT: Now, let's read it back, and
14 then the witness can answer the question, please.

15 (PREVIOUS QUESTION THEN READ)

16 (DISCUSSION OFF THE RECORD)

17 (REQUESTED PORTION OF THE RECORD READ)

18 MR. GANT: And then the next question and
19 answer.

20 (REQUESTED PORTION OF THE RECORD READ)

21 BY MR. GANT:

22 Q. I believe the question was answered. So
23 I'm just going to move on, unless Mr. Wilson feels
24 like he needs to elaborate.

25 A. I do not.

1 A. Yes, I do.

2 Q. Can you explain what you mean, you're
3 familiar with the book?

4 A. The -- the book was actually provided
5 early on out of my organization in Greensboro to
6 our licensees under an agreement.

7 Q. Have you ever read the book in its
8 entirety?

9 A. I have not.

10 Q. When's the last time you looked at the
11 book in any way?

12 A. At least 20 years ago.

13 Q. Do you have any personal knowledge about
14 whether or not the Lions' book has been published
15 with the permission of Santa Cruz, as stated in
16 your declaration?

17 A. No.

18 Q. Will you turn to the next page of your
19 declaration?

20 A. (THE WITNESS COMPLIED)

21 Q. Paragraph 38. The first sentence says, "I
22 understand that plaintiff has made certain UNIX
23 source code available for download without charge
24 on the internet." Do you see that, sir?

25 A. Yes, I do.

1 Q. Do you have any personal knowledge to
2 support that statement?
3 A. I do not.
4 Q. And am I correct that with respect to the
5 information set out in paragraph 39, you also lack
6 personal knowledge about those issues?
7 A. You are correct.
8 Q. Could you look at page 17 of your December
9 2003 declaration. That's paragraph 41. Five lines
10 from the bottom, you refer to confidentiality
11 restrictions. Do you see that, sir?
12 A. Yes.
13 Q. Could you look up at the top of that
14 paragraph, in particular at the first sentence,
15 where you -- you've quoted language about available
16 without restriction to the general public. When
17 you referred to confidentiality restrictions, were
18 you referring back up to the language from the
19 software agreements about availability without
20 restriction to the general public?
21 MR. MARRIOTT: Objection as to form.
22 THE WITNESS: I'm -- I didn't understand
23 the question. You said was I referring to the
24 software agreements?
25 BY MR. GANT:

1 Q. Well, let me -- that was a bad question.
2 Let me withdraw it and start again.
3 Paragraph 41 says, "In addition, a
4 software product or any part of the software
5 product is available without" -- "without
6 restrictions to the general public if released,
7 distributed or made available pursuant to an open
8 source license, like the GPL." Do you see that?
9 A. Uh-huh, yes.
10 Q. Can you show me exactly where in a
11 software agreement this language appears?
12 A. I cannot.
13 Q. It's not in the software agreements?
14 A. No.
15 Q. Later in the paragraph you say, "However,
16 the intent was that if source code were distributed
17 without confidentiality restrictions, it would no
18 longer be subject to any confidentiality
19 restrictions." Do you see that, sir?
20 A. Yes, I do.
21 Q. Can you point me to any express language
22 in the software agreements which states this?
23 MR. MARRIOTT: Those exact words?
24 MR. GANT: (NODS HEAD UP AND DOWN)
25 THE WITNESS: No.

1 MR. MARRIOTT: Don't get up and dance,
2 Otis, just because you hear the piano.
3 THE WITNESS: Oh.
4 BY MR. GANT:
5 Q. Could you turn to --
6 THE WITNESS: It's time for tea.
7 Q. -- paragraph 42. If you could, just take
8 a quick look at that paragraph, and then I have a
9 question for you, please?
10 A. Okay.
11 Q. The last clause of the last sentence of
12 that paragraph says, "I believe that it is unlikely
13 that a significant amount of UNIX System V code
14 remains subject to confidentiality restrictions."
15 That statement is not based on personal knowledge,
16 is it?
17 A. That's correct.
18 Q. You're simply speculating there on that
19 issue; is that right?
20 THE COURT REPORTER: Your answer?
21 THE WITNESS: I didn't answer yet.
22 Yes.
23 BY MR. GANT:
24 Q. Could you look at paragraph 43 on that
25 same page. The first sentence reads, "As discussed

1 above, when I headed the UNIX licensing group at
2 AT&T and USL, our stated policy was to treat all of
3 our licensees essentially the same." What do you
4 mean by, "essentially"?
5 A. I guess I meant exactly the same.
6 Q. So the language here is imprecise?
7 A. That's correct.
8 Q. When you say it was, "our stated policy,"
9 can you think of any written documents that set out
10 this policy?
11 A. No legal documents, other than our -- you
12 know, our discussion with licensees and our
13 statements at seminars. Those types of things.
14 Q. When you wrote this statement in your
15 declaration and attested to it under penalty of
16 perjury, did you have any specific written
17 documents in mind?
18 A. I did not.
19 Q. Can you state with certainty whether there
20 ever were, in fact, any written documents setting
21 out the policy you've described in the first
22 sentence of paragraph 43?
23 MR. MARRIOTT: Objection as to form.
24 THE WITNESS: I don't recall.
25 BY MR. GANT:

1 Q. You can't state with certainty?
 2 A. I can't state with certainty that that was
 3 written.
 4 Q. From whom did you get your understanding
 5 of this alleged policy?
 6 MR. MARRIOTT: Objection as to form.
 7 THE WITNESS: That was our policy. That's
 8 what we practiced, and -- and that's what led to
 9 this -- this most favorite customer clause in our
 10 agreement, which was also conveyed to our licensees
 11 verbally and through seminars and the newsletter.
 12 MR. GANT: Move to strike as
 13 nonresponsive.
 14 BY MR. GANT:
 15 Q. My question was: From -- from whom did
 16 you gain your understanding about this so-called
 17 policy?
 18 MR. MARRIOTT: Objection as to form. The
 19 question was asked and has been answered. If you
 20 have a different answer, Mr. Wilson, give it.
 21 THE WITNESS: I do not have a different
 22 answer.
 23 BY MR. GANT:
 24 Q. Well, you haven't identified anyone.
 25 Should I take that to mean that you don't remember

1 who, if anyone, told you that this was AT&T's
 2 policy?
 3 MR. MARRIOTT: Objection as to form.
 4 Argumentative, mischaracterizes the prior
 5 testimony.
 6 THE WITNESS: That was the policy. I mean
 7 that was -- that was the practice that we used in
 8 developing our agreements, and it was -- that's
 9 what was practiced. I mean that's the way it was.
 10 I don't remember ever seeing a specific
 11 document that said that, other than things like we
 12 talked about, the most favorite clause -- the most
 13 favorite customer cause that we put in there, or
 14 our behavior was when someone would ask for a
 15 modification or a change based on something another
 16 licensee had.
 17 But we would state that all of the time.
 18 I don't know where it -- I don't believe anybody
 19 really -- I can't point to an individual that told
 20 me that, but that was just our -- that was our
 21 practice.
 22 BY MR. GANT:
 23 Q. You can't point to anyone who told you
 24 that?
 25 A. No.

1 Q. You can't point to any written document
 2 that set out that so-called policy described in the
 3 first sentence of paragraph 43; correct?
 4 A. No. I can only point to language that
 5 implemented that policy, but not something that
 6 stated the policy.
 7 Q. Can you look after the block quote on
 8 paragraph 43. You refer -- there's a block quote
 9 from paragraph A.12 of the IBM side letter there;
 10 correct?
 11 A. Yes.
 12 Q. And your declaration says that, "This
 13 language meant that if any other licensee were
 14 offered or obtained terms more favorable to the
 15 licensee than those contained in the IBM-related
 16 agreement, then IBM would have the advantage of
 17 a" -- "of such more favorable terms, as they had
 18 been set forth in the IBM-related agreements." Do
 19 you see that?
 20 A. Yes.
 21 Q. Can you direct me to where exactly in
 22 paragraph A.12 a statement appears that supports
 23 your recollection about what this language meant?
 24 A. I don't believe it's there, but I'll
 25 stipulate for you. You've already looked at -- I

1 don't believe that's there in the side letter.
 2 Q. Paragraph A.12 doesn't contain language
 3 which supports your explanation about the meaning
 4 of that language; is that correct?
 5 MR. MARRIOTT: Objection as to form.
 6 Take -- take whatever time you need to
 7 look at paragraph A.12, Mr. Wilson.
 8 Q. Well, the whole thing is contained right
 9 there in paragraph 43; is that correct?
 10 A. Yes.
 11 MR. GANT: So let's read back my question,
 12 and see if you can answer it.
 13 THE WITNESS: I thought you were going
 14 through the specific language. So this is what's
 15 there in that side letter.
 16 BY MR. GANT:
 17 Q. Can you point to any specific language in
 18 paragraph A.12 of the IBM side letter that supports
 19 your understanding of the meaning of that language,
 20 which is set forth in paragraph 43 of your December
 21 declaration?
 22 MR. MARRIOTT: I object to the question as
 23 vague. He has pointed to the language, and it is
 24 quoted in his declaration.
 25 Q. Can you answer my question?

Page 313

1 A. I would say paragraph 12.
 2 Q. Which words in particular support your
 3 view that if any other licensee were offered or
 4 obtained terms more favorable to the licensee than
 5 those contained in the IBM-related agreements, that
 6 IBM would have the advantage of such more favorable
 7 terms? Where does it say that?
 8 MR. MARRIOTT: Well, you've now asked two
 9 different questions. Where does it say exactly
 10 that, or where does he find the support for that?
 11 So which of the questions you've asked?
 12 Q. Why don't you take the first part of that
 13 question, please.
 14 A. It's not there, because -- it's not there.
 15 Q. Can you look at the next sentence, which
 16 says that, "Although, not all of our licensees had
 17 a side letter or most-favored customer provision,
 18 we interpreted our license agreements in light of
 19 the collective body of UNIX license agreements."
 20 Do you see that, sir?
 21 A. Yes, I do.
 22 Q. Is it your testimony that to understand
 23 what any one UNIX licensing agreement meant, one
 24 would have to look at not just that agreement, but
 25 also all other UNIX license agreements?

Page 314

1 MR. MARRIOTT: Objection as to form.
 2 Lacks foundation, calls for speculation, seeks a
 3 legal conclusion from a lay witness.
 4 THE WITNESS: On any given day you
 5 wouldn't have to look at all of the licensing
 6 agreements. You would look at the -- the software
 7 agreement and any side letters that pertained to
 8 that software agreement. So it's not looking at
 9 all licensees. It's looking at the specific side
 10 letters that pertain to it.
 11 BY MR. GANT:
 12 Q. All right. Let me rephrase it. So I make
 13 sure I'm getting what you're saying. Is it your
 14 testimony that to understand what any one UNIX
 15 license agreement meant, one would have to look not
 16 just at that agreement, but also at all side
 17 letters executed by all UNIX licensees in order to
 18 ascertain the meaning of the UNIX license
 19 agreement?
 20 MR. MARRIOTT: Same objections.
 21 THE WITNESS: And only -- the only thing I
 22 differ on that is that you could look at the
 23 software agreement and side letters, and not all of
 24 the side letters were executed by licensees,
 25 because there would be -- there's one software

Page 315

1 agreement.
 2 So no matter how many people executed, it
 3 would still be the same. There might have been 15
 4 side letters. Some licensees might have two or
 5 three. Some might have all ten, but if you look at
 6 those bodies, you'd have all of the -- you'd have
 7 an understanding of all of the agreements.
 8 BY MR. GANT:
 9 Q. How many different side letters were there
 10 while you were at AT&T?
 11 A. I don't recall.
 12 Q. How would you figure out which side
 13 letters AT&T wanted to apply to a particular
 14 license agreement under its policy or practice?
 15 A. It was usually driven by the request from
 16 the licensee usually for some particular
 17 clarification that they needed with regard to the
 18 software agreement or by knowledge they gained
 19 by -- by talking to other licensees that, oh, we
 20 have this, or, do you have that in your agreement,
 21 that kind of thing, or seminars. The whole thing.
 22 The whole nine yards.
 23 Q. Would those requests sometimes come
 24 orally, rather than in writing?
 25 A. Yes.

Page 316

1 Q. So would one would need to know whether or
 2 not there were oral requests from licensees in
 3 order to understand the meaning of a particular
 4 UNIX license agreement?
 5 MR. MARRIOTT: Objection as to form.
 6 Lacks foundation, calls for speculation, seeks a
 7 legal conclusion from a lay witness.
 8 THE WITNESS: No. I didn't mean to imply
 9 that they were oral agreements. The requests for
 10 clarification may have been oral, written or
 11 because they talked to the licensees.
 12 BY MR. GANT:
 13 Q. So a given licensee -- let's call it
 14 licensee A -- might have orally requested
 15 information or clarification about a particular
 16 term; correct?
 17 A. Right.
 18 Q. And it's possible that there would be no
 19 written record of that request; correct?
 20 MR. MARRIOTT: Objection as to form. It
 21 calls for speculation.
 22 THE WITNESS: That's correct.
 23 BY MR. GANT:
 24 Q. If someone two years later wanted to
 25 figure out the meaning of the license agreement

1 between Licensee A and AT&T, what would someone
2 look at?

3 MR. MARRIOTT: Objection as to form.

4 THE WITNESS: They would look at the
5 agreements.

6 BY MR. GANT:

7 Q. Which agreements?

8 A. Between the licensee and AT&T.

9 Q. Only the ones actually signed and executed
10 by the parties or also other things?

11 MR. MARRIOTT: Objection as to form.

12 THE WITNESS: I don't know, but they
13 would -- but I'm saying that what would govern
14 would be the licensing agreements between the
15 licensee and AT&T. That's what they would look at.
16 If someone wanted to look at it, a third party, are
17 you saying, or --

18 BY MR. GANT:

19 Q. No. I'm saying -- let's say there's a
20 software agreement between AT&T and Licensee A.
21 Okay. And Licensee A subsequently calls up AT&T
22 and asks for what you're describing as
23 clarifications about certain issues. Okay. Are
24 you still following me?

25 A. (WITNESS NODS HEAD UP AND DOWN)

1 Q. And two years later there's a question
2 about the meaning of the agreements between AT&T
3 and Licensee A. What would someone look at -- what
4 documents would someone look at in order to figure
5 out the scope and nature of the agreement between
6 AT&T and Licensee A?

7 MR. MARRIOTT: Objection as to form.
8 Lacks foundation, calls for speculation, seeks a
9 legal conclusion from a lay witness.

10 THE WITNESS: They would look at those --
11 those executed agreements that were in place
12 between Licensee A and AT&T. They would not have
13 the benefit of any phone calls. They would not --

14 BY MR. GANT:

15 Q. Would they look at anything else?

16 MR. MARRIOTT: Objection as to form. Same
17 objections.

18 THE WITNESS: You know, depending on their
19 knowledge of our licensing program, they would
20 probably look at \$ echo, that we talked earlier
21 about. Several publications of that to see what
22 interpretations meant.

23 BY MR. GANT:

24 Q. \$ echo was sometimes used in interpreting
25 UNIX license agreements?

1 A. \$ echo was used -- well, it could have
2 been there -- maybe by our licensees. I'm not
3 speculating. I'm saying that the -- there was
4 information that sometimes folks would look at the
5 licensing.

6 As I mentioned earlier, they would look at
7 the specimen agreement. They would look at that,
8 and then they might look at something such as a
9 seminar or things that were in the \$ echo, in
10 forming what their licensing policy or agreements
11 would do.

12 Q. That's what the AT&T personnel would do in
13 interpreting license agreements?

14 MR. MARRIOTT: Objection as to form.

15 THE WITNESS: No. That what our licensees
16 would do; not AT&T.

17 BY MR. GANT:

18 Q. That would be appropriate for them to do?

19 A. Yes.

20 Q. Could you --

21 MR. MARRIOTT: Back in time -- I'm sorry.
22 We've been going -- let's just take a break here.
23 Are you almost done?

24 Q. Can you look at page 19, paragraph 46, of
25 your December declaration. This language was

1 removed from your declaration when it was revised
2 and you executed it in April of 2004; correct?

3 A. They're kind of running together. I read
4 both of them now. Okay. Yes.

5 Q. The second sentence of paragraph 46 says,
6 "In fact, section 7.10 is not about confidentiality
7 at all." What is your definition of the term
8 confidentiality, as you used it in that paragraph?

9 A. The -- confidentiality is the -- the
10 protective language in the software agreement that
11 defines how licensees could use this sublicense --
12 I mean -- excuse me. Could use the software
13 products.

14 Q. Do those uses include the right to sell,
15 lease or otherwise transfer or dispose of a
16 software product?

17 MR. MARRIOTT: Objection as to form.

18 THE WITNESS: Only as provided in (b),
19 76(b), which was exchange between source code and
20 licensees of equal scope.

21 MR. GANT: Could you read back the
22 question and the answer, please.

23 (DISCUSSION OFF THE RECORD)

24 (REQUESTED PORTION OF THE RECORD READ)

25 THE WITNESS: "Of equal scope."

BY MR. GANT:

Q. Do you acknowledge that confidentiality issues are implicated if someone has the right to sell, lease, transfer or dispose of a software product?

MR. MARRIOTT: Objection as to form. Lacks foundation, calls for speculation, vague and confusing.

THE WITNESS: I think it would be interpreted that way. Yes.

BY MR. GANT:

Q. Can you take a look at the end of paragraph 46. The last sentence says, "In fact, since section 7.10 does not prohibit the licensee from doing anything or require the licensee to do anything, I do not think it is possible for a licensee to breach section 7.10."

Do you see that, sir?

A. Yes.

Q. We've already covered that you're not an attorney; correct?

A. (WITNESS NODS HEAD UP AND DOWN)

Q. Is it your view that whether or not there's been a breach of a license agreement is ultimately a legal question?

THE VIDEOGRAPHER: Going off the record.

The time is 5:55 p.m.

(RECESS TAKEN AT 5:55 P.M. TO 6:09 P.M.)

(DEPOSITION EXHIBIT NUMBERS 80, 81, 82, 83 AND 84 WERE MARKED FOR IDENTIFICATION)

THE VIDEOGRAPHER: Back on the record.

The time is 6:09 p.m.

Please, continue.

BY MR. GANT:

Q. Okay. I'm going to show you some documents, Mr. Wilson, that -- we've premarked a document as Number 80.

MR. MARRIOTT: Can I get copies of all of these, please?

MR. GANT: Yes. I apologize for throwing.

MR. MARRIOTT: That's all right.

MR. GANT: Big table.

BY MR. GANT:

Q. I'll just identify the document for the record while you take a look at it, Mr. Wilson. I'll do that with the next several documents. So it's -- you can ignore what I'm saying.

Mr. Marriott will keep me in line.

Exhibit 80 is a document, Bates number SCO1017589 through 1017597. Have you had a chance

MR. MARRIOTT: Objection as to form.

THE WITNESS: I'm not -- I'm not quite sure how to answer that. From -- in other words, if I would look -- or have some code examined and -- which I thought was in breach, that would be -- is that what you mean by --

BY MR. GANT:

Q. Let me --

A. In other words, the evidence of a breach would -- I don't think would be a legal --

Q. Let me try it --

A. -- determination.

Q. I'm sorry. I didn't mean to cut you off. Let me try a different way.

The last clause of paragraph 46 says, "I do not think it is possible for a licensee to breach section 7.10." You're expressing a layperson's view; is that right?

A. Yes. That's correct.

Q. And you don't know as a matter of law whether or not the statement you made is accurate?

A. As the statement -- well, that's correct.

MR. MARRIOTT: Are we going to be a lot longer, because, if so, let's just take a break.

(DISCUSSION OFF THE RECORD)

to review Exhibit 80?

MR. MARRIOTT: Well, I mean --

Q. Briefly?

THE WITNESS: Seriously.

MR. MARRIOTT: If you're going to ask -- I mean if you're going to ask anything substantive about this, I want him to read the whole document, or we're going to be -- unfortunately, you've pulled this on us now, when you said you've got five minutes left, and given him documents, which are obviously going to take some time to review. If you're just going to say, have you ever seen this before, that's one thing, but if you really want him to answer questions, he's obviously got to read the document.

MR. GANT: You can decide for yourself whether, Mr. Wilson --

MR. MARRIOTT: Well, do you think he should answer questions without reading the document, Counselor?

MR. GANT: Well, why don't you wait to hear the questions?

MR. MARRIOTT: Well, I'm just asking you, if you can tell me, and then we can perhaps avoid --

MR. GANT: It depends on what the question is.

MR. MARRIOTT: Okay. Go ahead.

BY MR. GANT:

Q. Okay. My first question for you, Mr. Wilson, is: Do you recognize this document as a format of a document that was used by AT&T during your employment there?

A. Yes.

Q. Could you turn to the last page of Exhibit 80. Do you see a signature under AT&T Technologies there?

A. Yes.

Q. Do you recognize that signature?

A. Yes, I do.

Q. Whose is it?

A. Dave Frasure.

Q. And David Frasure signed this document on your behalf?

A. Yes.

Q. Do you have any reason to doubt the authenticity of this document?

A. I haven't read it, and -- so I would have to read it.

Q. Do you have any reason to doubt that this

agreement. In other words, UNIX -- I'm going to guess, because it's getting late. UNIX is the brand name. So --

Q. Well --

I'm sorry. I didn't mean to cut you off. I'm just trying to see if I could ask a different question that may help.

A. Yeah. Well, what helps is -- in other words, the -- the software agreement and UNIX System V -- System V was a particular product under the software agreement.

And so just in the first paragraph it talks about the software agreement and the sublicensing agreement. And I don't know what products they had under that agreement, because DEC was one of our earlier licensees, and they go all of the way back prior.

Q. Digital -- Digital Equipment Corporation was a licensee of some AT&T --

A. Software.

Q. -- UNIX licensed products; correct?

A. Yes.

Q. I'm going to show you a document premarked as Exhibit 81. Again, do you recognize the format of this document as one that you used during your

is a document that came out of AT&T's files?

MR. MARRIOTT: Maybe I can -- without reading it, can you answer the question?

THE WITNESS: I don't think so.

BY MR. GANT:

Q. What was --

A. And the reason I'm saying that, that comes from our licensing operation. You have to read these things. I mean --

Q. The first page of the document has an AT&T logo and address on the right; correct?

A. (WITNESS NODS HEAD UP AND DOWN)

Q. And on the left it has your name and a title. Do you see that?

A. Yes.

Q. Was that your title at that point in time, February 21, 1985?

A. Yes, it is.

Q. And is this the format of letterhead that you used during this period of time?

A. Yes, it is.

Q. Was Digital Equipment Corporation a licensee of AT&T's UNIX?

A. Oh, boy. It's getting late. They were a licensee of software products under the software

tenure at AT&T during approximately 1987?

A. Yes, I do.

Q. Could you turn to the second page of Exhibit 81. Do you see a signature there under, "AT&T Information Systems"?

A. Yes, I do.

Q. Do you recognize the signature?

A. Yeah. That's my signature.

Q. Do you have any reason to doubt that this is an authentic copy of a letter sent by AT&T to Sequent in July 1987?

A. I do not. Only as I stipulated earlier, I would -- I haven't had -- it looks like it is a document. So I don't have any reason to believe it's not, unless I read it.

Q. I'm going to hand you what's been premarked as Exhibit 82. Let me just go back to 81, for the record, and put in the Bates number. The Bates number of Exhibit 81 was SCO0983624 through 625. And the Bates numbers of Exhibit 82 are SCO1067675 through 1067677, a three-paged document.

Again, Mr. Wilson, looking at Exhibit 82, is this the format that you used during your tenure at AT&T?

1 A. That's correct.
 2 Q. And, if you could, turn to page three of
 3 Exhibit 82. Do you recognize the signature under,
 4 "AT&T Information Systems"?
 5 A. Yes, I do.
 6 Q. Is that your signature?
 7 A. Yes, it is.
 8 Q. Do you have any reason to doubt that
 9 Exhibit 82 is an authentic copy of a document sent
 10 by AT&T to IBM in June 1987?
 11 A. I do not have, but I haven't read them.
 12 So I'm --
 13 Q. Right. Looking at the document, this
 14 appears consistent with --
 15 A. Yes, it does.
 16 Q. I'm going to hand you what's been
 17 premarked as Exhibit 83. While you take a quick
 18 look at it, for the record, this document is Bates
 19 number SCO1056901 through 1056908, an eight-paged
 20 document.
 21 Mr. Wilson, directing your attention to
 22 the first page of Exhibit 83. Does your signature
 23 appear on the document?
 24 A. Yes, it does.
 25 Q. Can you show or read -- describe into the

1 read it. I mean it looks -- it appears to be.
 2 Q. Was Toyota Technological Institute a
 3 licensee of UNIX products during your tenure at
 4 AT&T?
 5 A. Based on this document, I would say, yes.
 6 I don't recall that particular institute directly.
 7 I don't have any recall at this time. This is 20
 8 years ago.
 9 Q. I'm going to hand you what's been
 10 premarked as Exhibit 84. For the record, this
 11 document is Bates numbered SCO10 -- excuse me.
 12 SCO1104142 through 1104149, an eight-paged
 13 document.
 14 Directing your attention to the first page
 15 of Exhibit 84. Do you recognize your signature?
 16 A. Yes, I do.
 17 Q. And was that your signature, which appears
 18 above your typewritten initials and last name?
 19 A. Yes, it is.
 20 Q. Again, is this a format for a software
 21 agreement that AT&T used during your tenure there?
 22 A. Yes, it is.
 23 Q. Do you have any reason to doubt that this
 24 is an authentic copy of a software agreement
 25 between AT&T and the University of Tasmania?

1 record where it appears?
 2 A. It appears on the first page at the
 3 bottom, dated --
 4 Q. Above your name?
 5 A. Above my name.
 6 Q. Otis Wilson?
 7 A. Dated August 14th, 1984.
 8 Q. Do you recognize the format of this
 9 document?
 10 A. Yes, I do.
 11 Q. What is it?
 12 A. It's an educational software agreement
 13 between AT&T Technologies and Toyota Technology --
 14 Technological Institute in Japan.
 15 Q. Is this one of the formats used by AT&T
 16 for its license agreements during your tenure at
 17 AT&T?
 18 A. Yes, it is.
 19 Q. And looking at the form of the document --
 20 strike that.
 21 Looking at the document, do you see
 22 anything that gives you reason to doubt that this
 23 is an authentic copy of a document from AT&T's
 24 files?
 25 A. No. As I stated, only because I haven't

1 A. I do not.
 2 (DISCUSSION OFF THE RECORD)
 3 MR. GANT: I'd like to mark the next
 4 document Exhibit 85.
 5 (DEPOSITION EXHIBIT NUMBER 85 WAS MARKED
 6 FOR IDENTIFICATION)
 7 BY MR. GANT:
 8 Q. For the record, this document is Bates
 9 numbered SCO1014916 through 1014918, a three-paged
 10 document. Could I direct your attention to the
 11 second page of the document, Mr. Wilson?
 12 A. Yes.
 13 Q. Do you see your signature there under,
 14 "AT&T Technologies"?
 15 A. Yes, I do.
 16 Q. And, again, is this document in the form
 17 that was used by you during your tenure at AT&T?
 18 A. Yes, it is.
 19 Q. Do you have any reason to doubt that this
 20 is an authentic copy of a letter from you to IBM in
 21 May 1984?
 22 A. No.
 23 (DISCUSSION OFF THE RECORD)
 24 MR. GANT: Pass the witness.
 25 MR. MARRIOTT: Okay. Well, let's take a

1 break. Let me look at these documents and see what
2 I -- if anything. I think I'll have a little bit,
3 but not a terrible amount.

4 (DISCUSSION OFF THE RECORD)

5 THE VIDEOGRAPHER: Going off the record.

6 The time is 6:22 p.m.

7 (RECESS TAKEN AT 6:22 P.M. TO 6:41 P.M.)

8 THE VIDEOGRAPHER: Back on the record.

9 The time is 6:41 p.m..

10 Please, continue.

11 REDIRECT-EXAMINATION

12 BY MR. MARRIOTT:

13 Q. Mr. Wilson, I -- I believe you were asked
14 a question regarding the -- the meaning or
15 definition of the term software product, and I'm
16 not entirely sure that I -- that I correctly heard
17 your answer, but did I understand you to say that
18 as you understand the definition of the term
19 software product it includes modifications and
20 derivative works?

21 MR. GANT: Objection. Vague.

22 THE WITNESS: The software product does
23 not include modifications of derivative works.

24 BY MR. MARRIOTT:

25 Q. All right. So the term software product,

1 as defined in the AT&T, UNIX licensing agreements,
2 does not, as you understand it, include
3 modifications and derivative works?

4 MR. GANT: Objection. Vague and compound.

5 THE WITNESS: That's correct.

6 BY MR. MARRIOTT:

7 Q. I believe you were asked a question about
8 the meaning of the term control, generally and
9 specifically, as used by you in paragraph 15 of
10 your declaration.

11 As you understand the AT&T, UNIX licensing
12 agreements, did AT&T have any right to control any
13 portion of a modification or derivative work of a
14 software product that did not include a portion of
15 software product?

16 MR. GANT: Objection. Vague, foundation,
17 compound.

18 THE WITNESS: It did not.

19 BY MR. MARRIOTT:

20 Q. I believe you may have said you had heard
21 said that AIX is a derivative of UNIX. Do you, in
22 fact, know whether AIX is a derivative of UNIX?

23 MR. GANT: Objection. Compound, leading.

24 THE WITNESS: I do not have personal
25 knowledge. No, I do not.

1 BY MR. MARRIOTT:

2 Q. You, I believe, were asked questions about
3 whether you have personal knowledge of certain
4 sales by AT&T Capital Corporation of -- of
5 hardware, including source code.

6 And I believe your testimony was that you
7 didn't have personal knowledge of the actual
8 dispositions by AT&T Capital Corporation of those
9 machines; is that right?

10 MR. GANT: Objection. Vague, compound.

11 MR. MARRIOTT: Well, let me withdraw the
12 question.

13 BY MR. MARRIOTT:

14 Q. Did you, in fact, have discussions with
15 individuals at AT&T while you were there, employed,
16 Mr. Wilson, about the fact that AT&T Capital
17 Corporation had disposed of hardware, including
18 source code?

19 MR. GANT: Objection. Foundation, vague,
20 calls for speculation.

21 THE WITNESS: Yes, I did.

22 BY MR. MARRIOTT:

23 Q. You were asked several questions about
24 AT&T's policy with respect to paragraph 43 of -- of
25 your declaration, dated December 11, 2003. Do you

1 recall that line of questions, sir?

2 A. Yes, I do.

3 Q. You were asked, I believe, specifically
4 about whether you could recall any documents that
5 reflected that policy. Do you recall that
6 testimony, sir?

7 A. Yes.

8 Q. Do you have a view as to whether, for
9 example, the \$ echo publications of AT&T reflected
10 the company's policy as described in -- in
11 paragraph 43?

12 MR. GANT: Objection. Vague, foundation,
13 calls for speculation.

14 THE WITNESS: Yes. I believe they do.

15 BY MR. MARRIOTT:

16 Q. And what about the side letters issued by
17 the company, do you believe they reflected the
18 company policy as described in paragraph 43?

19 MR. GANT: Same objections.

20 THE WITNESS: Yes, I do.

21 Q. And do you have any doubt, Mr. Wilson,
22 about the fact that the policy, as described in
23 paragraph 43, was, in fact, the policy as you knew
24 it and understood it and implemented it while you
25 were employed at AT&T?

Page 337

Page 339

1 MR. GANT: Same objections.
 2 THE WITNESS: No, I do not.
 3 BY MR. MARRIOTT:
 4 Q. You were asked whether it was possible
 5 that there might be errors in -- more errors in
 6 your declaration. Do you recall that line of
 7 questions, Mr. Wilson?
 8 A. Yes, I do.
 9 Q. Are you aware of any -- did you --
 10 withdrawn.
 11 Did you carefully review both of your
 12 declarations before you signed them?
 13 A. Yes, I did.
 14 Q. And have you reviewed them again in
 15 anticipation of this deposition?
 16 A. Yes, I have.
 17 Q. And we've discussed them here today at
 18 this deposition?
 19 A. Yes, we have.
 20 Q. As you sit here today, Mr. Wilson, other
 21 than as you may have clarified or corrected during
 22 the course of today's examination, do you believe
 23 there are any errors in the declarations that you
 24 signed and submitted in this matter?
 25 A. I do not.

1 you some questions in response to questions I had
 2 asked you. Do you recall that?
 3 A. Yes, I do.
 4 Q. And before Mr. Marriott commenced his,
 5 what we'll call, redirect examination of you, there
 6 was a break preceding that. Do you recall that?
 7 A. Yes.
 8 Q. During that break -- I don't want to know
 9 any specifics of any discussions between you and
 10 Mr. Marriott, but I want to know whether or not you
 11 were aware before you came back into the room for
 12 your redirect examination any of the topics about
 13 what you were going to be asked during that
 14 redirect?
 15 A. No.
 16 Q. You were not?
 17 A. (WITNESS SHOOK HEAD FROM SIDE TO SIDE)
 18 Q. Would you turn to tab five of your April
 19 2004 declaration, please?
 20 MR. MARRIOTT: I think the originals are
 21 in front of you.
 22 MR. GANT: Which is Exhibit 75. Is that
 23 right? No. I'm wrong. It's Exhibit 76. Excuse
 24 me.
 25 MR. MARRIOTT: Tab four or five?

Page 338

Page 340

1 MR. MARRIOTT: I pass.
 2 MR. GANT: Let's just confer for a second.
 3 MR. MARRIOTT: Okay.
 4 MR. GANT: It should be quick.
 5 MR. MARRIOTT: I hope I gave you the
 6 opportunity -- and I should just say, I didn't --
 7 Counsel --
 8 MR. GANT: We're off the record.
 9 MR. MARRIOTT: Well, actually, I wouldn't
 10 mind saying this on the record.
 11 MR. GANT: Okay.
 12 MR. MARRIOTT: Go ahead. Never mind.
 13 We're off the record. It's not worth it.
 14 (DISCUSSION OFF THE RECORD)
 15 THE VIDEOGRAPHER: Going off the record.
 16 The time is 6:46 p.m.
 17 (RECESS TAKEN AT 6:46 P.M. TO 7:04 P.M.)
 18 (REQUESTED PORTION OF THE RECORD READ)
 19 THE VIDEOGRAPHER: Back on the record.
 20 The time is 7:04 p.m.
 21 Please, continue.
 22 RECROSS-EXAMINATION
 23 BY MR. GANT:
 24 Q. Okay. Mr. Wilson, we just came back from
 25 a break. And before the break Mr. Marriott asked

1 MR. GANT: Five.
 2 BY MR. GANT:
 3 Q. This is the agreement between AT&T and
 4 Sequent; is that correct?
 5 A. Yes, it is.
 6 Q. And this agreement is a standard software
 7 agreement used by AT&T for UNIX licensing; correct?
 8 A. That's correct.
 9 Q. Could you turn to page two of that
 10 document, which contains language of section 2.01.
 11 Do you see that?
 12 A. Yes.
 13 Q. And I'd like to direct your attention to
 14 the last sentence of section 2.01, which begins,
 15 "Such right." Do you see that?
 16 A. Yes.
 17 Q. Could you read that sentence into the
 18 record, please?
 19 A. "Such right to use includes the right to
 20 modify such software product and to prepare
 21 derivative works based on such software product,
 22 provided the resulting materials are treated
 23 hereunder as part of the original software
 24 product."
 25 Q. Do you acknowledge, Mr. Wilson, that under

1 the terms of section 2.01 a derivative work or
2 modification of the software product, as defined in
3 this agreement, is defined as a resulting material
4 in the agreement?

5 MR. MARRIOTT: Objection as to form. The
6 agreement speaks for itself.

7 THE WITNESS: Yes. I agree. Yes, I do.

8 BY MR. GANT:

9 Q. And do you also acknowledge, Mr. Wilson,
10 that under the terms of section 2.01, resulting
11 materials are to be treated as part of the original
12 software product, as the term software product is
13 defined in the agreement?

14 MR. MARRIOTT: Objection as to form.
15 Lacks foundation. Calls for speculation.

16 THE WITNESS: Yes.

17 BY MR. GANT:

18 Q. Is the term derivative work defined in the
19 standard software agreement?

20 A. No.

21 Q. Is the term modify or modification defined
22 in the standard software agreement?

23 A. It is not.

24 Q. Is it your view that if one wants to
25 ascertain whether or not a particular product is a

1 product?

2 MR. MARRIOTT: Objection as to the form.
3 The document speaks for itself.

4 THE WITNESS: Yes.

5 BY MR. GANT:

6 Q. Do you recall a few moments ago that
7 Mr. Marriott asked you some questions related to
8 hardware that was once in the possession of AT&T
9 Capital?

10 A. Yes.

11 Q. And I believe you testified that you were
12 told by some individuals at AT&T that they might
13 have done something with this hardware. Was that
14 what you were testifying about?

15 A. Yes.

16 Q. I want to understand the details of what
17 you were describing when you answered
18 Mr. Marriott's question. So the first thing I'd
19 like to know is when these discussions occurred?

20 A. I don't recall specifically when they
21 occurred.

22 Q. You don't recall any specific discussions?

23 A. Not that I can identify the time and the
24 individuals I actually talked to. I remember
25 discussions taking place, but it was a long time

1 derivative work or modification, as those terms are
2 used in the standard software agreement, one needs
3 to look at other information to make that
4 determination?

5 MR. MARRIOTT: Objection as to form.
6 Vague.

7 THE WITNESS: When you say, "other
8 information," other than the derivative work
9 itself?

10 MR. GANT: Well, let me -- let me withdraw
11 the question and try it differently.

12 BY MR. GANT:

13 Q. Based on your experience at AT&T how would
14 one ascertain whether or not a particular product
15 is a derivative of or a modification of UNIX?

16 MR. MARRIOTT: Objection as to form.

17 THE WITNESS: You would have to -- you
18 would have to look at the derivative work.

19 BY MR. GANT:

20 Q. And examine that work?

21 A. Yes.

22 Q. Do you acknowledge that under the terms of
23 section 2.01 all derivative works and all
24 modifications of the software product are also to
25 be treated as part of the original software

1 ago.

2 Q. You don't remember who you had the
3 discussions with?

4 A. I do not.

5 Q. You don't remember when the discussions
6 occurred?

7 A. No.

8 Q. Do you remember what, if any, hardware was
9 discussed?

10 A. They talked -- no. The specific hardware?
11 I do not.

12 Q. And, I take it then, you don't know for a
13 fact one way or another whether if any such
14 hardware was disposed of, whether it contained any
15 software?

16 A. That's correct.

17 Q. Mr. Marriott asked you some follow-up
18 questions, which involved the use of the term
19 control. Do you remember that?

20 A. Yes.

21 Q. Do you also remember that I asked you some
22 questions about that term?

23 A. Yes.

24 Q. And do you remember that you testified
25 that the term control appears nowhere in the UNIX

1 license agreements?
 2 A. That's correct.
 3 Q. And your testimony was accurate in that
 4 regard?
 5 A. That's what -- yeah. I believe that's
 6 what I said. Yes...
 7 Q. So when you used the term control in your
 8 declaration, that is a term that you've supplied,
 9 and does not appear anywhere in any of AT&T's UNIX
 10 license agreements; correct?
 11 MR. MARRIOTT: Objection as to form.
 12 THE WITNESS: Yeah. That specific word.
 13 Yes. That's --
 14 BY MR. GANT:
 15 Q. Pardon me?
 16 A. That's correct.
 17 Q. Could you turn to paragraph 43 of your
 18 December 2003 declaration. This -- I'm sorry.
 19 I'll wait for you to catch up.
 20 A. Okay.
 21 Q. This paragraph was not carried into your
 22 April 2004 declaration; correct?
 23 A. That's correct.
 24 Q. So the most current version of your
 25 declaration doesn't contain paragraph 43 at all; is

1 MR. MARRIOTT: Objection as to form.
 2 THE WITNESS: That's correct, given that
 3 we understand that there were different groups of
 4 licensees. So if you say, all licensees, all
 5 licensees were not equal.
 6 BY MR. GANT:
 7 Q. I'm not following your explanation.
 8 A. Well, we had educational licenses. We had
 9 commercial licenses. We had --
 10 Q. Okay. Well, I'm -- I'm reading the
 11 sentence that you put in your declaration --
 12 A. Rights.
 13 Q. -- as clarified during your deposition
 14 today.
 15 A. Right.
 16 Q. So let me just make sure we've got this
 17 clearly. Your declaration, as amended by your --
 18 your refinement of the language earlier today,
 19 states, "As discussed above, when I headed the UNIX
 20 licensing group at AT&T and USL, our stated policy
 21 was to treat all of our licensees exactly the
 22 same?"
 23 A. Yeah. That's correct.
 24 Q. Okay. That's what your declaration says,
 25 as modified today; correct?

1 that right?
 2 A. That's correct.
 3 Q. And you don't know why paragraph -- the
 4 text that appears in paragraph 43 of your December
 5 declaration was dropped and not carried into your
 6 April 2004 declaration; is that right?
 7 MR. MARRIOTT: Objection as to the form.
 8 THE WITNESS: That's correct.
 9 BY MR. GANT:
 10 Q. Now, as we discussed, the first paragraph
 11 of -- excuse me. As we discussed, the first
 12 sentence of paragraph 43 states as follows, "As
 13 discussed above, when I headed the UNIX licensing
 14 group at AT&T and USL, our stated policy was to
 15 treat all of our licensees essentially the same."
 16 Do you recall discussing that with me?
 17 A. Yes, I do.
 18 Q. And I believe you testified that upon
 19 reflection the word essential shouldn't be in that
 20 sentence; is that correct?
 21 A. Yeah. What I stated was I probably --
 22 exactly was -- was probably more appropriate.
 23 Q. So it's your testimony that AT&T's stated
 24 policy was to treat all of its licensees exactly
 25 the same? Is that your testimony?

1 A. Yes.
 2 Q. And you stand by that statement?
 3 A. Yes, I do.
 4 Q. And it's the case, isn't it, that in
 5 response to my questioning you were unable to
 6 identify any written documents that reflected this
 7 so-called policy to treat all of AT&T's licensees
 8 exactly the same? Isn't that what you told me when
 9 I asked you that question?
 10 A. I believe I qualified it by saying that
 11 the -- the policy was reflected in our agreements,
 12 side letters and \$ echo, for example.
 13 Q. Do you recall adding that qualification
 14 when Mr. Marriott asked you some questions?
 15 A. They're running together right now. I'm
 16 not quite sure who asked the question.
 17 Q. Is it your testimony that side letters
 18 entered into by AT&T with licensees sets forth
 19 explicitly in writing AT&T's supposed policy that
 20 it will treat all licensees exactly the same?
 21 MR. MARRIOTT: Objection as to form.
 22 Misstates the testimony.
 23 THE WITNESS: Well, the policy, per se,
 24 was not stated in those side letters. It was --
 25 those things that were reflected in the side

1 letters were available to all of our licensees.
 2 BY MR. GANT:
 3 Q. But the side letters themselves do not set
 4 forth the policy referenced in the first sentence
 5 of paragraph 43; is that correct?
 6 A. That's correct. That's correct.
 7 Q. And is it also correct that the \$ echo
 8 publications do not set forth the so-called policy
 9 of AT&T to treat all of its licensees exactly the
 10 same?
 11 A. That's correct.
 12 MR. MARRIOTT: Objection as to form.
 13 Q. So to restate my question, which I think I
 14 asked, but I want to make sure it's clear. Are you
 15 able to identify any written documents that set
 16 forth AT&T's supposed policy that it would treat
 17 all of its licensees exactly the same? Can you
 18 identify any written document that sets forth that
 19 policy?
 20 A. I cannot.
 21 MR. GANT: I pass the witness back. If
 22 you're done --
 23 MR. DAVIS: Scott --
 24 MR. GANT: No, I'm not. One moment,
 25 please.

1 (DISCUSSION OFF THE RECORD)
 2 MR. GANT: Just a few more. Thank you.
 3 BY MR. GANT:
 4 Q. I showed you some documents that we marked
 5 as Exhibits 80 through 85, I believe. Do you
 6 recall that?
 7 A. Yes, I do.
 8 (DISCUSSION OFF THE RECORD)
 9 BY MR. GANT:
 10 Q. And we've also looked today at Exhibits 75
 11 and 76 and the attachments thereto, which contain a
 12 number of agreements between AT&T and UNIX
 13 licensees; correct?
 14 A. That's correct.
 15 Q. With respect to those agreements, you
 16 described them as standard form agreements, some of
 17 them; is that -- is that right?
 18 A. Yes.
 19 Q. Who drafted the language for the standard
 20 form agreement?
 21 A. By name? Specifically by name?
 22 Q. Was it an attorney?
 23 A. Yes.
 24 Q. Who was it?
 25 A. Again, I don't know specifically.

1 Q. Did AT&T attorneys draft all of the
 2 licenses used by AT&T to license its UNIX
 3 materials?
 4 A. Yes, they did.
 5 (DISCUSSION OFF THE RECORD)
 6 MR. MARRIOTT: We're going a little bit
 7 beyond the scope, guys.
 8 MR. GANT: Are you going to have any, if I
 9 stop now?
 10 MR. MARRIOTT: Well, yeah, because I have
 11 questions -- yeah, I do have some.
 12 MR. GANT: Okay. Then --
 13 MR. MARRIOTT: But within the scope, I
 14 think. I mean are you done, because I don't want
 15 to just hear you have --
 16 MR. GANT: I'll pass.
 17 MR. MARRIOTT: No. I want to let you
 18 finish, and then --
 19 MR. GANT: No. I'm going to pass it back
 20 to you. I --
 21 MR. DAVIS: This is a discovery
 22 deposition.
 23 MR. GANT: I just want to put on the
 24 record our position about whether the deposition
 25 remains open. So if you're -- if you're done, then

1 I'll --
 2 MR. MARRIOTT: So you have no more
 3 questions?
 4 MR. GANT: That's right. I'll pass the
 5 witness back.
 6 MR. MARRIOTT: All right. I have a couple
 7 of questions.
 8 REDIRECT EXAMINATION
 9 BY MR. MARRIOTT:
 10 Q. Mr. Wilson, with respect to paragraph 43
 11 of your declaration, which makes reference to a
 12 policy to treat licensees the same, do you have any
 13 doubt that that was your policy?
 14 MR. GANT: Objection. Vague, leading,
 15 foundation, calls for speculation and for legal
 16 conclusions.
 17 THE WITNESS: I do not.
 18 BY MR. MARRIOTT:
 19 Q. Did AT&T -- with respect to control, did
 20 AT&T intend to control any modification or
 21 derivative work of its software products, except
 22 insofar as such modifications or derivative works
 23 might include a portion of the software product?
 24 MR. GANT: Objection. Leading, vague,
 25 foundation, compound, calls for speculation and

1 legal conclusions.
2 MR. MARRIOTT: I don't think you missed
3 any objection known to man, but you can --
4 BY MR. MARRIOTT:
5 Q. You can go ahead and answer the question.
6 Do you need it read back?
7 A. No, we did not.
8 Q. Did AT&T intend to assert control over its
9 licensees' products except to the extent those
10 products might include AT&T's software products?
11 MR. GANT: Same objections.
12 THE WITNESS: We did not.
13 BY MR. MARRIOTT:
14 Q. Okay. As AT&T understood its -- its UNIX
15 agreements, its licensees could do whatever they
16 wanted with modifications and derivative works of
17 the software product, so long as they did not --
18 (DISCUSSION OFF THE RECORD)
19 MR. GANT: I'm going to need it read back
20 when you're done too.
21 BY MR. MARRIOTT:
22 Q. -- disclose any portion of the software
23 product that might have been in the modification or
24 derivative work; is that correct?
25 MR. GANT: And before you answer, I'd like

1 true, accurate and complete?
2 A. Yes, with the exception of one. I was
3 thinking about when you asked me about the wives.
4 Q. Yes.
5 A. Yeah. I missed one.
6 Q. You missed a wife?
7 A. Yeah.
8 Q. You had three -- three ex-wives?
9 A. You said three. You said three. Yeah.
10 Q. Okay.
11 A. And that was Janet Smith.
12 Q. Okay. Thank you for that clarification.
13 Beyond that -- and we won't tell her.
14 A. Please, don't.
15 Q. Is there anything else about your
16 testimony in response to my questions that was
17 anything other than true, accurate and complete?
18 A. No.
19 Q. And is there anything about Mr. Marriott's
20 follow-up questions, in response to my questions,
21 that has led you to conclude that any of your
22 answers to my questions were false, inaccurate or
23 incomplete?
24 A. No.
25 MR. GANT: All right. With that, I

1 it read back and then have the chance to object.
2 (REQUESTED PORTION OF THE RECORD READ)
3 (DISCUSSION OFF THE RECORD)
4 BY MR. MARRIOTT:
5 Q. As AT&T understood its UNIX licensing
6 agreements, could its licensees do whatever they
7 wanted with modifications or derivative works of
8 the software product, so long as they did not
9 disclose any portion of the software product that
10 might have been included in the modification or
11 derivative work?
12 MR. GANT: Same objections.
13 THE WITNESS: That's correct.
14 MR. MARRIOTT: Okay. Do you want to make
15 your statement, and then we can all go home?
16 MR. GANT: Well, I just want to ask one
17 last question and then make my statement. Then
18 we're done.
19 MR. MARRIOTT: We may be going at this
20 forever.
21 MR. DAVIS: You guys should play tennis.
22 RECROSS-EXAMINATION
23 BY MR. GANT:
24 Q. Mr. Wilson, were all of the answers that
25 you provided today in response to my questions

1 assume --
2 MR. MARRIOTT: Well, I have now one
3 question.
4 MR. GANT: Okay.
5 REDIRECT EXAMINATION
6 BY MR. MARRIOTT:
7 Q. Is there anything, Mr. Wilson, about the
8 testimony that you've provided in response to any
9 of my questions that you think was inaccurate or
10 incomplete or incorrect or needs in any way to be
11 modified?
12 A. No.
13 MR. MARRIOTT: Thank you.
14 Now you can make your statement. I hope.
15 MR. GANT: I can.
16 For the reasons set forth at the outset of
17 the deposition, we reserve the right to resume the
18 deposition and to seek any other appropriate relief
19 from the court based on the untimely disclosure of
20 Mr. Wilson's declarations. Other than that, I
21 thank Mr. Wilson for his time.
22 MR. MARRIOTT: And I will make just a
23 statement.
24 There was no untimely disclosure of any
25 declarations. The declarations were provided on

the schedule provided for by Magistrate Judge Wells. I think the opportunity that you've had today to examine this witness has been full and fair and complete.

And as much as you'd like to describe the -- the availability of the declarations as somehow an impediment today, it seems to me, if anything else, I've given you even a fuller opportunity at examination of Mr. -- of Mr. Wilson.

And I think with that said, you know our position, which is that this is it. So -- thank you.

THE VIDEOGRAPHER: One moment, please. If you could, just pause a moment.

This concludes the deposition -- this day's deposition of Otis Wilson. The number of tapes used was four. The master video tapes will be retained by Russell Court Reporting, Incorporated.

Going off the record. The time is 7:27 p.m.

(SIGNATURE RESERVED)

(DEPOSITION CONCLUDED AT 7:27 P.M.)

Russell Court Reporting, Inc.

P.O. Box 507

Lewisville, North Carolina 27023

(Page 1 of 2)

ERRATA SHEET

RE: SCO vs. IBM

DEPOSITION OF: Otis L. Wilson

Please read this transcript with care, and if you find any corrections or changes you wish made, list them by page and line number below. DO NOT WRITE IN THE TRANSCRIPT ITSELF. Return the Certificate and Errata Sheet to this office after it is signed. We would appreciate your prompt attention to this matter.

To assist you in making any such corrections, please use the form below. If supplemental or additional pages are necessary, please furnish same and attach them to this errata sheet.

Page ____ Line ____ should

read:

Page ____ Line ____ should

read:

Page ____ Line ____ should

read:

Page ____ Line ____ should

read:

Page ____ Line ____ should

read:

Page ____ Line ____ should

read:

WITNESS' CERTIFICATE

I, Otis L. Wilson, do hereby certify that I have read and understand the foregoing transcript and believe it to be a true, accurate, and complete transcript of my testimony, subject to the attached list of changes, if any.

OTIS L. WILSON

This deposition was signed in my presence by _____, on the _____ day of _____, 2004.

Notary Public

My commission expires: _____

Page ____ Line ____ should

(Page 2 of 2)

read:

Page ____ Line ____ should

read:

Page ____ Line ____ should

read:

Page ____ Line ____ should

read:

Page ____ Line ____ should

read:

Page ____ Line ____ should

read:

Page ____ Line ____ should

read:

Page ____ Line ____ should

read:

Page ____ Line ____ should

read:

Page ____ Line ____ should

read:

Page ____ Line ____ should

read:

Page ____ Line ____ should

read:

Page ____ Line ____ should

read:

Page ____ Line ____ should

read:

Page ____ Line ____ should

read:

1 STATE OF NORTH CAROLINA
2 COUNTY OF JOHNSTON

3 REPORTER'S CERTIFICATE

4 I, Lisa A. DeGroat, RPR, a Notary Public in
5 and for the State of North Carolina, do hereby
6 certify that there came before me on Thursday,
7 June 10th, 2004, the person hereinbefore named, who
8 was by me duly sworn to testify to the truth and
9 nothing but the truth of his knowledge concerning
10 the matters in controversy in this cause; that the
11 witness was thereupon examined under oath, the
12 examination reduced to typewriting under my
13 direction, and the deposition is a true record of
14 the testimony given by the witness.

15 I further certify that I am neither
16 attorney or counsel for, nor related to or employed
17 by, any attorney or counsel employed by the parties
18 hereto or financially interested in the action.

19 IN WITNESS WHEREOF, I have hereto set my
20 hand and affixed my official notarial seal, this
21 the 15th day of June, 2004.
22
23
24

25 _____
Lisa A. DeGroat, RPR